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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

**PASSED BY THE
1995 GENERAL ASSEMBLY**

**AT ITS
FIRST EXTRA SESSION 1996**

**BEGINNING ON
WEDNESDAY, THE TWENTY-FIRST DAY OF
FEBRUARY, A.D. 1996**

**AND AT ITS
REGULAR SESSION 1996**

**BEGINNING ON
MONDAY, THE THIRTEENTH DAY OF MAY, A.D. 1996**

**AND AT ITS
SECOND EXTRA SESSION 1996**

**BEGINNING ON
MONDAY, THE EIGHT OF JULY, A.D. 1996**

HELD IN THE CITY OF RALEIGH

**ISSUED BY
SECRETARY OF STATE JANICE H. FAULKNER**

PUBLISHED BY AUTHORITY

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STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1995 GENERAL ASSEMBLY

DENNIS A. WICKER.....	President of the Senate	Lee
HAROLD J. BRUBAKER	Speaker of the House of Representatives	Randolph

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by
election and comprising the Council of State)

JAMES B. HUNT, JR.....	Governor	Wilson
DENNIS A. WICKER.....	Lieutenant Governor	Lee
JANICE H. FAULKNER	Secretary of State	Martin
RALPH CAMPBELL, JR.	Auditor	Wake
HARLAN E. BOYLES	Treasurer	Wake
BOB R. ETHERIDGE	Superintendent of Public Instruction	Harnett
MICHAEL F. EASLEY.....	Attorney General	Brunswick
JAMES A. GRAHAM.....	Commissioner of Agriculture	Rowan
HARRY E. PAYNE, JR.	Commissioner of Labor	New Hanover
JAMES E. LONG.....	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Hunt are carried in the appendix to this volume.

1995 GENERAL ASSEMBLY

SENATE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
DENNIS A. WICKER.....	President	Sanford, Lee County
MARC BASNIGHT.....	President Pro Tempore	Manteo, Dare County
R. C. SOLES, JR.....	Deputy President Pro Tempore	Tabor City, Columbus County
SYLVIA M. FINK.....	Principal Clerk	Raleigh, Wake County
LEROY CLARK, JR.....	Reading Clerk	Wendell, Wake County
CECIL GOINS.....	Sergeant-at-Arms	Raleigh, Wake County

SENATORS

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	MARC BASNIGHT.....	Dare	Manteo
2	FRANK W. BALLANCE, JR.....	Warren	Warrenton
3	BEVERLY M. PERDUE.....	Craven	New Bern
4	PATRICK J. BALLENTINE (R).....	New Hanover	Wilmington
5	CHARLES W. ALBERTSON.....	Duplin	Beulaville
6	R. L. MARTIN.....	Pitt	Bethel
7	LUTHER HENRY JORDAN, JR.....	New Hanover	Wilmington
8	JOHN KERR III.....	Wayne	Goldsboro
9	ED N. WARREN.....	Pitt	Greenville
10	ROY A. COOPER III.....	Nash	Rocky Mount
11	JAMES D. SPEED.....	Franklin	Louisburg
12	DON W. EAST (R).....	Surry	Pilot Mountain
12	VIRGINIA FOXX (R).....	Watauga	Banner Elk
13	WILBUR P. GULLEY.....	Durham	Durham
13	JEANNE H. LUCAS.....	Durham	Durham
14	HENRY E. MCCOY (R).....	Wake	Raleigh
14	J. K. SHERRON, JR.....	Wake	Raleigh
15	DANIEL E. PAGE (R).....	Harnett	Coats
16	FRED M. HOBBS (R).....	Moore	Southern Pines
16	TEENA S. LITTLE (R).....	Moore	Southern Pines
17	J. RICHARD CONDER.....	Richmond	Rockingham
17	AARON W. PLYLER.....	Union	Monroe
18	R. C. SOLES, JR.....	Columbus	Tabor City
19	ROBERT G. SHAW (R).....	Guilford	Greensboro
20	HAMILTON C. HORTON (R).....	Forsyth	Winston-Salem
20	JAMES MARK MCDANIEL (R).....	Forsyth	Pfafftown
21	HUGH WEBSTER (R).....	Caswell	Yanceyville
22	FLETCHER L. HARTSELL, JR. (R).....	Cabarrus	Concord
23	PAUL S. SMITH (R).....	Rowan	Salisbury
24	ANTHONY E. RAND.....	Cumberland	Fayetteville
25	DAVID W. HOYLE.....	Gaston	Dallas
26	AUSTIN M. ALLRAN (R).....	Catawba	Hickory
27	DONALD R. KINCAID (R).....	Caldwell	Lenoir
27	DAN R. SIMPSON (R).....	Burke	Morganton
28	R. L. CLARK (R).....	Buncombe	Asheville
28	JESSE I. LEDBETTER (R).....	Buncombe	Asheville
29	J. CLARK PLEXICO.....	Henderson	Hendersonville
30	DAVID R. PARNELL.....	Robeson	Parkton
31	WILLIAM N. MARTIN.....	Guilford	Greensboro
32	* THOMAS B. SAWYER, SR. (R).....	Guilford	Greensboro
32	** JOHN M. BLUST (R).....	Guilford	Greensboro
33	CHARLIE SMITH DANNELLY.....	Mecklenburg	Charlotte
34	T L. ODOM.....	Mecklenburg	Charlotte
35	JOHN GERALD BLACKMON (R).....	Mecklenburg	Charlotte
36	JOHN H. CARRINGTON (R).....	Wake	Raleigh
37	DENNIS DAVIS (R).....	Cleveland	Lattimore
38	BETSY L. COCHRANE (R).....	Davie	Advance
39	JAMES FORRESTER (R).....	Gaston	Stanley
40	LESLIE WINNER.....	Mecklenburg	Charlotte
41	C. R. EDWARDS.....	Cumberland	Fayetteville
42	ROBERT C. CARPENTER (R).....	Macon	Franklin

* Died March 19, 1996

** Appointed May 9, 1996

HOUSE OFFICERS

<i>Name</i>	<i>Position</i>	<i>Address</i>
HAROLD J. BRUBAKER . . .	Speaker	Asheboro, Randolph County
CAROLYN B. RUSSELL . . .	Speaker Pro Tempore	Goldsboro, Wayne County
DENISE G. WEEKS	Principal Clerk	Willow Springs, Wake County
JOAN N. DANIELEY	Reading Clerk	Winston-Salem, Forsyth County
CLYDE COOK, JR.	Sergeant-at-Arms	Garner, Wake County

REPRESENTATIVES

<i>District</i>	<i>Name</i>	<i>County</i>	<i>Address</i>
1	W. C. OWENS, JR.	Pasquotank	Elizabeth City
2	ZENO L. EDWARDS, JR. (R)	Beaufort	Washington
3	JOHN M. NICHOLS (R)	Craven	New Bern
4	JEAN ROUSE PRESTON (R)	Carteret	Emerald Isle
4	JONATHAN ROBINSON (R)	Carteret	Stacy
5	HOWARD J. HUNTER, JR.	Northampton	Conway
6	RICHARD EUGENE ROGERS	Martin	Williamston
7	L. W. LOCKE	Halifax	Enfield
8	LINWOOD E. MERCER	Pitt	Farmville
9	M. W. ALDRIDGE (R)	Pitt	Greenville
10	CYNTHIA B. WATSON (R)	Duplin	Rose Hill
11	LOUIS M. PATE, JR. (R)	Wayne	Mount Olive
12	EDWARD C. BOWEN	Sampson	Harrells
13	DAN MCCOMAS (R)	New Hanover	Wilmington
14	DEWEY L. HILL	Columbus	Whiteville
14	E. DAVID REDWINE	Brunswick	Shallotte
15	J. SAM ELLIS (R)	Wake	Raleigh
16	DOUGLAS Y. YONGUE	Scotland	Laurinburg
17	MARY E. MCALLISTER	Cumberland	Fayetteville
17	LARRY SHAW	Cumberland	Fayetteville
18	JOHN W. HURLEY	Cumberland	Fayetteville
18	BILLY RICHARDSON	Cumberland	Fayetteville
19	WILLIS BROWN	Harnett	Buies Creek
19	DONALD DAVIS (R)	Harnett	Erwin
20	BILLY J. CREECH (R)	Johnston	Clayton
21	DANIEL T. BLUE, JR.	Wake	Raleigh
22	JIM CRAWFORD	Granville	Oxford
22	MICHAEL S. WILKINS	Person	Roxboro
23	PAUL LUEBKE	Durham	Durham
23	H. M. MICHAUX, JR.	Durham	Durham
23	GEORGE W. MILLER, JR.	Durham	Durham
24	ANNE C. BARNES	Orange	Chapel Hill
24	JOE HACKNEY	Orange	Chapel Hill
25	CARY D. ALLRED (R)	Alamance	Burlington
25	KEN MILLER (R)	Alamance	Mebane
25	DENNIS REYNOLDS (R)	Alamance	Burlington
26	ALMA ADAMS	Guilford	Greensboro
27	STEVE WOOD (R)	Guilford	High Point
28	FLOSSIE BOYD-McINTYRE	Guilford	Jamestown
29	JOANNE W. BOWIE (R)	Guilford	Greensboro
30	ARLIE F. CULP (R)	Randolph	Ramseur
31	RICHARD T. MORGAN (R)	Moore	Pinehurst
32	HUGH A. LEE	Richmond	Rockingham
33	FOYLE HIGHTOWER, JR.	Anson	Wadesboro
34	FERN SHUBERT (R)	Union	Marshville
35	CHARLOTTE A. GARDNER (R)	Rowan	Salisbury
36	JIM BLACK	Mecklenburg	Matthews
37	PAUL R. MCCRARY	Davidson	Lexington
38	HAROLD J. BRUBAKER (R)	Randolph	Asheboro
39	LYONS GRAY (R)	Forsyth	Winston-Salem
40	REX L. BAKER (R)	Stokes	King
40	WILLIAM S. HIATT (R)	Surry	Mt. Airy
40	GENE WILSON (R)	Watauga	Boone
41	JOHN W. BROWN (R)	Wilkes	Elkin
41	GEORGE M. HOLMES (R)	Yadkin	Hamptonville

42	FRANK MITCHELL (R)	Iredell	Olin
43	C. ROBERT BRAWLEY (R)	Iredell	Mooreville
44	JOHN R. GAMBLE, JR.	Lincoln	Lincolnton
45	CHERIE KILLIAN BERRY (R)	Catawba	Newton
45	JOE L. KISER (R)	Lincoln	Vale
46	CHARLES F. BUCHANAN (R)	Mitchell	Green Mountain
46	GREGG THOMPSON (R)	Mitchell	Spruce Pine
47	WALTER G. CHURCH, SR.	Burke	Valdese
48	JACK HUNT	Cleveland	Shelby
48	DEBBIE A. CLARY (R)	Cleveland	Shelby
48	JOHN WEATHERLY (R)	Cleveland	Kings Mountain
49	ROBERT C. HUNTER	McDowell	Marion
50	LARRY T. JUSTUS (R)	Henderson	Hendersonville
51	LANIER CANSLER (R)	Buncombe	Asheville
51	LARRY R. LINNEY (R)	Buncombe	Asheville
51	WILMA SHERRILL (R)	Buncombe	Asheville
52	CHARLES M. BEALL	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	JAMES C. CARPENTER (R)	Macon	Otto
54	JOHN B. McLAUGHLIN	Mecklenburg	Newell
55	W. EDWIN McMAHAN (R)	Mecklenburg	Charlotte
56	MARTHA ALEXANDER	Mecklenburg	Charlotte
57	CONNIE WILSON (R)	Mecklenburg	Charlotte
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM	Mecklenburg	Charlotte
60	BEVERLY EARLE	Mecklenburg	Charlotte
61	CHARLES B. NEELY, JR. (R)	Wake	Raleigh
62	DAVID MINER (R)	Wake	Cary
63	ARLENE PULLEY (R)	Wake	Raleigh
64	BOB HENSLEY	Wake	Raleigh
65	RICK EDDINS (R)	Wake	Raleigh
66	LARRY W. WOMBLE	Forsyth	Winston-Salem
67	WARREN C. (PETE) OLDHAM	Forsyth	Winston-Salem
68	W. M. IVES (R)	Transylvania	Brevard
69	J. SHAWN LEMMOND (R)	Mecklenburg	Matthews
70	MILTON F. FITCH, JR.	Wilson	Wilson
71	NORRIS TOLSON	Edgecombe	Pinetops
72	GENE ARNOLD (R)	Nash	Rocky Mount
73	P. WAYNE SEXTON (R)	Rockingham	Stoneville
74	JULIA CRAVEN HOWARD (R)	Davie	Mocksville
75	ALEX WARNER	Cumberland	Hope Mills
76	W. W. DICKSON (R)	Gaston	Gastonia
77	CAROLYN B. RUSSELL (R)	Wayne	Goldsboro
78	STAN FOX	Granville	Oxford
79	WILLIAM WAINWRIGHT	Craven	Havelock
80	WILLIAM ROBERT GRADY (R)	Onslow	Jacksonville
81	TIMOTHY N. TALLENT (R)	Cabarrus	Concord
82	BOBBY HAROLD BARBEE, SR. (R)	Stanley	Locust
83	EUGENE MCCOMBS (R)	Rowan	Faith
84	MICHAEL DECKER (R)	Forsyth	Walkertown
85	RONNIE SUTTON	Robeson	Pembroke
86	WILLIAM T. CULPEPPER, III	Chowan	Edenton
87	FRANCES M. CUMMINGS (R)	Robeson	Lumberton
88	THERESA H. ESPOSITO (R)	Forsyth	Winston-Salem
89	JOHN A. COCKLEREECE (R)	Guilford	Greensboro
89	JOANNE SHARPE (R)	Guilford	Greensboro
90	ROBERT C. HAYES (R)	Cabarrus	Concord
91	GEORGE S. ROBINSON (R)	Caldwell	Lenoir
92	J. RUSSELL CAPPS (R)	Wake	Raleigh
93	JOHN RAYFIELD (R)	Gaston	Belmont
94	JERRY C. DOCKHAM (R)	Davidson	Denton
95	LEO DAUGHTRY (R)	Johnston	Smithfield
96	EDD NYE	Bladen	Elizabethtown
97	JERRY BRASWELL	Wayne	Goldsboro
98	THOMAS E. WRIGHT	New Hanover	Wilmington

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE MARC BASNIGHT,
Cochairman

HOUSE SPEAKER HAROLD BRUBAKER, *Cochairman*

SEN. JOHN H. CARRINGTON
SEN. J. RICHARD CONDER
SEN. WILBER P. GULLEY
SEN. TEENA S. LITTLE
SEN. R. L. MARTIN
SEN. DAVID R. PARNELL

REP. GENE ARNOLD
REP. C. ROBERT BRAWLEY
REP. WALTER C. CHURCH
REP. LYONS GRAY
REP. ROBERT C. HAYES
REP. MARY E. McALLISTER

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR.	Legislative Services Officer
GERRY F. COHEN.	Director of the Bill Drafting Division
THOMAS L. COVINGTON.	Director of the Fiscal Research Division
DON F. FULFORD.	Director of the Information Systems Division
ELAINE W. ROBINSON.	Director of the Administrative Division
TERRENCE D. SULLIVAN.	Director of the Research Division
J. MICHAEL MINSHEW.	Building Superintendent and Chief of Security

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. Sovereignty of the people.

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. Internal government of the State.

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. Secession prohibited.

This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. Allegiance to the United States.

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. Separation of powers.

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. Suspending laws.

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. Representation and taxation.

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. Frequent elections.

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. Free elections.

All elections shall be free.

Sec. 11. Property qualifications.

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. Right of assembly and petition.

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. Religious liberty.

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.*

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.*

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.*

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.*

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.*

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.*

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.*

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.*

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that

remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. Modes of prosecution.

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. Rights of accused.

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. Right of jury trial in criminal cases.

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. Right of jury trial in civil cases.

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. Jury service.

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. Bail, fines, and punishments.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. Imprisonment for debt.

There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. Treason against the State.

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same

overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.*

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.*

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.*

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.*

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.*

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principles.*

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.*

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.*

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. Number of Senators.

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. Senate districts; apportionment of Senators.

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. Number of Representatives.

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. Representative districts; apportionment of Representatives.

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. Qualifications for Senator.

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the

State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. Qualifications for Representative.

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. Elections.

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. Term of office.

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. Vacancies.

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. Sessions.

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. Oath of members.

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. President of the Senate.

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.*

The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.*

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.*

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.*

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.*

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.*

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.*

The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.*

All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. *Revenue bills.*

No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;

- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
 - (l) Giving effect to informal wills and deeds;
 - (m) Granting a divorce or securing alimony in any individual case;
 - (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.
- (2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.
- (3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.
- (4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. *Executive power.*

The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the

office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.*

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved

by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. Duties of the Lieutenant Governor.

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. Other elective officers.

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the

duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.*

The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.*

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.*

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. *Administrative departments.*

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV

JUDICIAL

Section 1. *Judicial power.*

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.*

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. Judicial powers of administrative agencies.

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. Court for the Trial of Impeachments.

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. Appellate division.

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. Supreme Court.

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. Court of Appeals.

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.*

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.*

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in

the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.*

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall

be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.*

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.*

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.*

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges, Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall

act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.*

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after

the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. Revenues and expenses of the judicial department.

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. Fees, salaries, and emoluments.

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. Qualification of Justices and Judges.

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. No capitation tax to be levied.

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. State and local taxation.

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding \$300, any personal property. The General Assembly may exempt from taxation not exceeding \$1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;

- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections, or to repel invasions;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. *Limitations upon the increase of local government debt.*

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of

its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

- (a) to fund or refund a valid existing debt;
- (b) to supply an unforeseen deficiency in the revenue;
- (c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
- (d) to suppress riots or insurrections;
- (e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
- (f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. *Acts levying taxes to state objects.*

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other

than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.*

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.*

Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities

to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.*

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.*

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to

issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. Higher Education Facilities.

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. Seaport and airport facilities.

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

- (a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;
- (b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial,

manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

- (c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.
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ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.*

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. Registration.

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I,, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, any person with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.*

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.*

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the

most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. Sheriffs.

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties.

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII

CORPORATIONS

Section 1. Corporate charters.

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. Corporations defined.

The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

Section 1. *Education encouraged.*

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system: term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.*

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.*

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all

needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. County school fund.

All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. Higher education.

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. Benefits of public institutions of higher education.

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. Escheats.

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or

distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.*

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than \$500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than \$1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. Mechanics' and laborers' liens.

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Sec. 4. Property of married women secured to them.

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. Insurance.

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. Punishments.

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.*

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.*

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.*

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII MILITARY FORCES

Section 1. *Governor is Commander in Chief.*

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.*

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of

Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. Power to revise or amend Constitution reserved to people.

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. Revision or amendment by Convention of the People.

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. Revision or amendment by legislative initiation.

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. Seat of government.

The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.*

The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.*

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.*

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.*

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote

of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

FIRST EXTRA SESSION 1996

S.B. 2

CHAPTER 1

AN ACT TO IMPLEMENT A ZERO UNEMPLOYMENT INSURANCE TAX RATE FOR 1996 FOR ALL EMPLOYERS WITH A POSITIVE EXPERIENCE RATING, ALLOW EMPLOYERS WITH A NEGATIVE RATING TO QUALIFY FOR THE ZERO RATE BY PREPAYING TAXES, REDUCE THE RATE FOR NEW EMPLOYERS FROM ONE AND EIGHT-TENTHS PERCENT TO ONE AND TWO-TENTHS PERCENT, ALLOW NEW EMPLOYERS TO QUALIFY SOONER FOR REDUCED RATES, AND AUTHORIZE A LEGISLATIVE RESEARCH COMMISSION STUDY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)(1) reads as rewritten:

"(1) Beginning Rate. -- The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:

<u>Percentage</u>	
<u>Date After Which Employment Occurs</u>	
2.25%	December 31, 1986
1.8	December 31, 1993, 1993
1.2	December 31, 1995"

Sec. 2. G.S. 96-9(b)(2) reads as rewritten:

"(2) Experience Rating. --

- a. Waiting Period for Rate Reduction. -- No employer's contribution rate shall be reduced below the standard rate for any calendar year ~~unless and until his~~ until its account has been chargeable with benefits ~~throughout more than 13 consecutive~~ for at least 12 calendar months ending July 31 immediately preceding the computation ~~date and his credit~~

~~reserve ratio meets the requirements of that schedule used in the computation date.~~

- b. Credit Ratio. -- The Commission shall, for each year, compute a credit reserve ratio for each employer whose account has a credit balance and has been chargeable with ~~benefits as set forth in G.S. 96-9(b)(2)a of this Chapter.~~ balance. An employer's credit reserve ratio shall be the quotient obtained by dividing the credit balance of ~~such the~~ employer's account as of July 31 of each year by the total taxable payroll of ~~such the~~ employer for the 36 calendar-month period ending June 30 preceding the computation date. Credit balance as used in this section means the total of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits to the account of the employer less the total benefits charged to the account of the employer for all past periods.
- c. Debit Ratio. -- The Commission shall for each year compute a debit ratio for each employer whose account shows that the total of all ~~his its~~ contributions paid and credited for all past periods in accordance with ~~the provisions of~~ G.S. 96-9(c)(1) together with all other lawful credits is less than the total benefits charged to ~~his its~~ account for all past periods. An employer's debit ratio shall be the quotient obtained by dividing the debit balance of ~~such the~~ employer's account as of July 31 of each year by the total taxable payroll of ~~such the~~ employer for the 36 calendar-month period ending June 30 preceding the computation date. The amount arrived at by subtracting the total amount of all contributions paid and credited for all past periods in accordance with the provisions of G.S. 96-9(c)(1) together with all other lawful credits of the employer from the total amount of all benefits charged to the account of the employer for such periods is the employer's debit balance.
- d. Other Provisions. -- For purposes of this subsection, the first date on which an account shall be chargeable with benefits shall be the first date with respect to which a benefit year ~~(as as defined in G.S. 96-8(17)d) 96-8~~ can be established, based in whole or in part on wages paid by that employer.

No employer's contribution rate shall be reduced below the standard rate for any calendar year unless ~~his its~~ liability extends over a period of all or part of ~~three two~~ consecutive calendar years and, as of August 1 of the ~~third second~~ year, ~~his its~~ credit reserve ratio meets the requirements of that schedule used in computing rates for the following calendar year, unless the employer's liability was established under G.S. 96-8(5)b and ~~his its~~ predecessor's account was transferred as provided by G.S. 96-9(c)(4)a.

Whenever contributions are erroneously paid into one account which should have been paid into another account or which should have been paid into a new account, that erroneous payment can be adjusted only by refunding the erroneously paid amounts to the paying entity. No pro rata adjustment to an existing account may be made, nor can a new account be created by transferring any portion of the erroneously paid amount, notwithstanding that the entities involved may be owned, operated, or controlled by the same person or organization. No adjustment of a contribution rate can be made reducing ~~said~~ the rate below the standard rate for any period in which the account was not in actual existence and in which it was not actually chargeable for benefits. Whenever payments are found to have been made to the wrong account, refunds can be made to the entity making the wrongful payment for a period not exceeding five years from the last day of the calendar year in which it is determined that wrongful payments were made. Notwithstanding payment into the wrong account, ~~any if an entity which~~ is determined to have met the requirements to be a covered employer, whether or not the entity has had paid on the account of its employees any sum into another account, the Commission shall collect contributions at the standard rate or the assigned rate, whichever is higher, for the five years preceding the determination of erroneous payments, ~~said which five years to~~ shall run from the last day of the calendar year in which the determination of liability for contributions or additional contributions is made. ~~This paragraph shall apply to all cases arising hereunder, the question of good faith notwithstanding.~~ requirement applies regardless of whether the employer acted in good faith."

Sec. 3. (a) G. S. 96-9(b)(3)g. reads as rewritten:

- "g. Any employer may at any time make a voluntary contribution, additional to the contributions required under this Chapter, to the fund to be credited to ~~his~~ its account, and such voluntary contributions when made shall for all intents and purposes be deemed 'contributions required' as ~~said this~~ term is used in G.S. 96-8(8). Any voluntary contributions so made by an employer within 30 days after the date of mailing by the Commission pursuant to G.S. 96-9(c)(3) ~~herein~~, of notification of contribution rate contained in cumulative account statement and computation of rate, shall be credited to ~~his~~ its account as of the previous July 31. ~~Provided, however, any voluntary contribution made as provided herein~~ If, however, the voluntary contribution is made after July 31 of any year it shall not be considered a part of the balance of the unemployment insurance fund for the purposes of G.S. 96-9(b)(3) until the following July 31. The Commission in accepting a voluntary contribution shall not be bound by any condition stipulated in

or made a part of ~~such~~ the voluntary contribution by any employer.

An employer that has a debit ratio under G.S. 96-9(b)(2)c. as of January 1, 1996, may make an additional contribution pursuant to this subdivision during the 1996 calendar year. If this voluntary contribution is made within 30 days after the Commission furnishes the employer an account status notice, this voluntary contribution shall be credited to the employer's account as of July 31, 1995."

(b) Effective January 1, 1997, the last paragraph of G.S. 96-9(b)(3)g., as added by subsection (a) of this section, is repealed.

Sec. 4.G.S. 96-9(b)(3) is amended by adding a new subdivision to read:

"d4. The standard beginning contribution rate set by subdivision (1) of this subsection applies to an employer unless the employer's account has a credit balance or a debit balance. Notwithstanding the provisions of subdivision (3)d3. of this subsection, beginning January 1, 1996, and for the calendar year 1996 only, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule."

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As	But
Much	Less
As	Than

Rate Schedules (%)

		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70	2.70	2.70	0.00	0.00	0.00	0.00	0.00	0.00
0.2%	0.4%	2.70	2.70	2.70	0.00	0.00	0.00	0.00	0.00	0.00
0.4%	0.6%	2.70	2.70	2.50	0.00	0.00	0.00	0.00	0.00	0.00
0.6%	0.8%	2.70	2.50	2.30	0.00	0.00	0.00	0.00	0.00	0.00
0.8%	1.0%	2.50	2.30	2.10	0.00	0.00	0.00	0.00	0.00	0.00
1.0%	1.2%	2.30	2.10	1.90	0.00	0.00	0.00	0.00	0.00	0.00
1.2%	1.4%	2.10	1.90	1.70	0.00	0.00	0.00	0.00	0.00	0.00
1.4%	1.6%	1.90	1.70	1.50	0.00	0.00	0.00	0.00	0.00	0.00
1.6%	1.8%	1.70	1.50	1.30	0.00	0.00	0.00	0.00	0.00	0.00
1.8%	2.0%	1.50	1.30	1.10	0.00	0.00	0.00	0.00	0.00	0.00
2.0%	2.2%	1.30	1.10	0.90	0.00	0.00	0.00	0.00	0.00	0.00
2.2%	2.4%	1.10	0.90	0.80	0.00	0.00	0.00	0.00	0.00	0.00
2.4%	2.6%	0.90	0.80	0.70	0.00	0.00	0.00	0.00	0.00	0.00
2.6%	2.8%	0.80	0.70	0.60	0.00	0.00	0.00	0.00	0.00	0.00
2.8%	3.0%	0.70	0.60	0.50	0.00	0.00	0.00	0.00	0.00	0.00
3.0%	3.2%	0.60	0.50	0.40	0.00	0.00	0.00	0.00	0.00	0.00

3.2%	3.4%	0.50	0.40	0.30	0.00	0.00	0.00	0.00	0.00	0.00
3.4%	3.6%	0.40	0.30	0.20	0.00	0.00	0.00	0.00	0.00	0.00
3.6%	3.8%	0.30	0.20	0.15	0.00	0.00	0.00	0.00	0.00	0.00
3.8%	4.0%	0.20	0.15	0.10	0.00	0.00	0.00	0.00	0.00	0.00
4.0%	4.2%	0.15	0.10	0.09	0.00	0.00	0.00	0.00	0.00	0.00
4.2%	4.4%	0.10	0.09	0.08	0.00	0.00	0.00	0.00	0.00	0.00
4.4%	4.6%	0.09	0.08	0.07	0.00	0.00	0.00	0.00	0.00	0.00
4.6%	4.8%	0.08	0.07	0.06	0.00	0.00	0.00	0.00	0.00	0.00
4.8%	5.0%	0.07	0.06	0.05	0.00	0.00	0.00	0.00	0.00	0.00
5.0%	OVER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00"

Sec. 5. (a) The Legislative Research Commission is authorized to study issues relating to the State's Employment Security Law, Chapter 96 of the General Statutes. The Legislative Research Commission is encouraged to appoint at least one member of the minority political party in each house to participate in the study.

(b) The Commission may make an interim report of its recommendations regarding the Employment Security Law to the 1996 Regular Session of the 1995 General Assembly and shall make a final report to the 1997 General Assembly.

Sec. 6. Section 4 of this act is effective with respect to calendar quarters beginning on or after January 1, 1996, and before January 1, 1997. Section 3(b) of this act becomes effective January 1, 1997. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of February, 1996.

RESOLUTIONS

H.J.R. 3

RESOLUTION 1

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE
OF THE 1996 EXTRA SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. When the House of Representatives and the Senate, constituting the 1996 Extra Session of the General Assembly, do adjourn on Wednesday, February 21, 1996, they stand adjourned sine die.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of February, 1996.

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 1996

H.B. 1074

CHAPTER 547

AN ACT TO PROHIBIT THE ISSUANCE OF NEW SHELLFISH CULTIVATION LEASES IN CORE BANKS, TO ESTABLISH A MORATORIUM ON SHELLFISH LEASES IN THE REMAINING AREA IN CARTERET COUNTY, AND TO REQUIRE THAT THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE STUDY THE SHELLFISH LEASE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding G.S. 113-202, the Secretary of the Department of Environment, Health, and Natural Resources shall not grant shellfish cultivation leases for the area along Portsmouth Island and Core Banks in Carteret County.

(b) For purposes of this act the area along Portsmouth Island and Core Banks is the area bounded by a line beginning at the northern tip of Portsmouth Island at 35°03'42"N - 76°02'06"W and running 339°M to a point on North Rock at 35°06'18"N - 76°04'00"W, thence 243°M to Hodges Reef Light at 35°02'42"N - 76°10'00"W, thence, 229.5°M to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence, 207°M to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence enclosed on the east by Core Banks and Portsmouth Island back to the point of beginning.

Sec. 2. This act does not prohibit the renewal or transfer of shellfish cultivation leases in Core Sound in accordance with G.S. 113-202 if the lease being renewed or transferred existed prior to or on the effective date of this act.

Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Carteret County not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section shall expire July 1, 1997.

Sec. 4. The Joint Legislative Commission on Seafood and Aquaculture shall study the shellfish lease program and shall consider the following issues: (i) preservation of areas used substantially by commercial and recreational fishermen; (ii) establishment of a maximum percentage of available water body for leases; (iii) restrictions on shellfish lease sizes and whether leases may be contiguous; (iv) production requirements; (v) evaluation of profitability of leases after period of time; and (vi) any other related issues. The Joint Legislative Commission shall report its findings and recommendations to the 1997 General Assembly.

Sec. 5. This act is effective May 1, 1996, and applies to any pending shellfish cultivation application or lease.

In the General Assembly read three times and ratified this the 23rd day of May, 1996.

H.B. 1088

CHAPTER 548**AN ACT TO CHANGE THE REQUIREMENT FOR HOSPITAL REIMBURSEMENT IN WORKERS' COMPENSATION CASES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-26(b) reads as rewritten:

"(b) Hospital Fees. -- Payment for medical compensation rendered by a hospital participating in the State ~~Plan~~ Plan, except as otherwise provided herein, shall be equal to the payment ~~the hospital receives for the same treatment and services under the State Plan.~~ Plan, provided that such payment with respect to inpatient hospital services shall not be less than ninety percent (90%) nor more than one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form. A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payors during the period from April 1, 1996, through June 30, 1997. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission. Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the ~~insurer or insurer, managed care organization, organization, or employer~~ insurer or insurer, managed care organization, organization, or employer to accept a different amount or reimbursement methodology."

Sec. 2. This act becomes effective April 1, 1996, and applies to hospital inpatient admissions occurring on or after that date. This act expires on June 30, 1997, and its expiration applies to all hospital inpatient admissions occurring on or after that date.

In the General Assembly read three times and ratified this the 28th day of May, 1996.

H.B. 1140

CHAPTER 549

AN ACT TO AUTHORIZE THE TOWN OF BATTLEBORO TO SCHEDULE AN ADVISORY REFERENDUM ON ITS MERGER INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. The Town of Battleboro may call an advisory referendum to be conducted on June 4, 1996, on the question of merger of the Town of Battleboro into the City of Rocky Mount.

Sec. 2. This act validates any actions previously taken to call and conduct such referendum.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1996.

S.B. 843

CHAPTER 550

AN ACT TO REVISE THE STATUTES REGARDING ANTITRUST LAW TO ENSURE THAT THESE PROVISIONS ARE INTERNALLY CONSISTENT AND CONSISTENT WITH FEDERAL ANTITRUST LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 75 of the General Statutes is amended by adding the following section to read:

"§ 75-2.1. Monopolizing and attempting to monopolize prohibited.

It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce in the State of North Carolina."

Sec. 2. G.S. 75-5, 75-6, and 75-7 are repealed.

Sec. 3. The repeal of G.S. 75-5 by Section 2 of this act is not intended to render conduct lawful that violates the provisions of any other section of Chapter 75 of the General Statutes.

Sec. 4. This act becomes effective October 1, 1996, and applies to civil actions filed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of June, 1996.

H.B. 1078

CHAPTER 551

AN ACT TO CLARIFY THE DATE OF THE MORATORIUM STEERING COMMITTEE'S FINAL REPORT AND TO EXTEND THE DATE THAT THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE IS REQUIRED TO REPORT.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 576 of the 1993 Session Laws reads as rewritten:

"Sec. 5. The Moratorium Steering Committee shall make its final report to the Joint Legislative Commission on Seafood and Aquaculture on or before November 1, 1996. The Joint Legislative Commission on Seafood and Aquaculture may shall report to the 1995 1997 General Assembly, and shall report on the first day the 1996 Regular Session commences Assembly on its findings, together with any recommended legislation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1996.

H.B. 1089

CHAPTER 552

AN ACT TO REMOVE LANGUAGE REQUIRING AN ATTORNEY'S OPINION AND WRITTEN STATEMENT IN APPEALS BY INDIGENTS FROM THE INDUSTRIAL COMMISSION TO THE NORTH CAROLINA COURT OF APPEALS AND TO CLARIFY THE PROCEDURE FOR SUCH INDIGENT APPEALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-86 reads as rewritten:

"§ 97-86. *Award conclusive as to facts; appeal; certified questions of law.*

The award of the Industrial Commission, as provided in G.S. 97-84, if not reviewed in due time, or an award of the Commission upon such review, as provided in G.S. 97-85, shall be conclusive and binding as to all questions of fact; but either party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

The Industrial Commission of its own motion may certify questions of law to the Court of Appeals for decision and determination by said Court. In case of an appeal from the decision of the Commission, or of a certification by said Commission of questions of law, to the Court of Appeals, said appeal or certification shall operate on a supersedeas except as provided in G.S. 97-86.1, and no employer shall be required to make payment of the award involved in said appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Article. If the employer is a noninsurer, then the appeal of such employer shall not act as a supersedeas and the plaintiff in such case shall have the same right to issue execution or to satisfy the award from the property of the employer pending the appeal as obtains to the successful party in an action in the superior court.

When any party to an appeal from an award of the Commission is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, any member of the Commission or any deputy commissioner ~~may, in their discretion,~~ shall enter an order allowing said

party to appeal from the award of the Commission without giving security therefor. The party appealing from the judgment shall, within 30 days from the filing of the appeal from the award, make an affidavit that he is unable by reason of his poverty to give the security required by law, ~~and that he is advised by a practicing attorney that there is error in the matters of law in the award of the Commission in said case. The affidavit must be accompanied by a written statement from a practicing attorney of North Carolina that he has examined the affiant's case and is of the opinion that the decision of the Commission in said case is contrary to law.~~ law. The request shall be passed upon and granted or denied by a member of the Commission or deputy commissioner within 20 days from receipt of the affidavit ~~and letter as specified above.~~

Sec. 2. This act becomes effective October 1, 1996, and applies to all appeals by indigents from an order of the Industrial Commission on or after that date.

In the General Assembly read three times and ratified this the 6th day of June, 1996.

H.B. 1158

CHAPTER 553

**AN ACT TO PROVIDE FOR HOLDING THE CANVASS FOR
PRIMARIES AND ELECTIONS ON THE THIRD RATHER THAN
THE SECOND DAY AFTER ELECTION DAY.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-175 reads as rewritten:

"§ 163-175. County board of elections to canvass returns.

On the ~~second~~ third day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A.M. at the county courthouse or at the office of the county board of elections (the choice of location to be at the option of the county board of elections) to canvass the votes cast in the county and prepare the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

- (1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.
- (2) In an election, the number of legal votes cast in [each] precinct for each candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to pass judicially upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and to determine judicially the result of the primary or election. Provided, however, that where a petitioner has been denied a recount upon a verbal or written order of the State Board of Elections pursuant to regulations of the State Board, the county board of elections shall not make or order a further recount. The board shall also have power to send for papers and persons and to examine them and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result."

Sec. 2. G.S. 163-291 reads as rewritten:

"§ 163-291. *Partisan primaries and elections.*

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms 'county board of elections,' 'chairman of the county board of elections,' 'county officers,' and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

- (1) The dates of primary and election shall be as provided in G.S. 163-279.
- (2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

- a. ~~In 1991 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and~~
- b. ~~In 1992 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106. election.~~

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a

notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.
- (4) The municipal ballot may not be combined with any other ballot.
- (5) The canvass of the primary and second primary shall be held on the ~~Thursday~~ third day (Sunday excepted) following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.
- (6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary."

Sec. 3. G.S. 163-293 reads as rewritten:

"§ 163-293. *Determination of election results in cities using the election and runoff election method.*

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

- (1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.
- (2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the

votes cast for a group of offices, a runoff election shall be held as herein provided:

- (1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.
- (2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.
- (c) The canvass of the first election shall be held on the ~~Thursday~~ third day (Sunday excepted) after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.
- (d) Tie votes; how determined:
 - (1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.
 - (2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a runoff election shall be held

between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot."

Sec. 4. G.S. 163-294 reads as rewritten:

"§ 163-294. Determination of election results in cities using nonpartisan primaries.

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election, as provided in G.S. 163-135(e) and G.S. 163-151(2). If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the ~~Thursday~~ third day (Sunday excepted) following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1996.

H.B. 1173

CHAPTER 554

AN ACT TO ALLOW PRECINCT ASSISTANTS TO WORK SPLIT SHIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-42 reads as rewritten:

"§ 163-42. *Assistants at polls; appointment; term of office; qualifications; oath of office.*

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the precinct for which appointed. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within a precinct.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1996.

H.B. 1090

CHAPTER 555

AN ACT TO REMOVE THE REQUIREMENT FOR WORKERS' COMPENSATION COVERAGE FOR SUBCONTRACTORS WITH NO EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-19 reads as rewritten:

"§ 97-19. *Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of ~~any such subcontractor, any principal or partner of such subcontractor or~~ any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to ~~any such subcontractor, any principal or partner of such subcontractor, or~~ any employee of such subcontractor for compensation or other benefits under this Article.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1996.

H.B. 1189

CHAPTER 556

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE LEGISLATIVE RESEARCH COMMISSION'S FINANCIAL INSTITUTIONS ISSUES COMMITTEE TO AUTHORIZE STATE-CHARTERED BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND SAVINGS BANKS TO OBSERVE HOLIDAYS AS DETERMINED BY THEIR BOARDS OF DIRECTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-77.2A is repealed.

Sec. 2. G.S. 53-77.1A reads as rewritten:

"§ 53-77.1A. Days and hours of operation.

~~Except as provided in G.S. 53-77.2A, a~~ A bank as defined in G.S. 53-1 or G.S. 53-136, including national banking associations and federal reserve banks, or any branch or limited service facility of the foregoing thereof located in this State, may operate on such days and during such hours hours, and may observe such holidays, as the bank's board of directors shall designate."

Sec. 3. G.S. 54B-110 reads as rewritten:

"§ 54B-110. Holidays- Days and hours of operation.

~~(a) Each State and federal association, including every branch or office thereof, domiciled in North Carolina shall observe the following as legal holidays and shall not open for the transaction of business with the public on those days:~~

- ~~(1) New Year's Day, January 1;~~
- ~~(2) Monday, January 2, when January 1 (New Year's Day) falls on Sunday;~~
- ~~(3) Monday, January 3, when January 1 (New Year's Day) falls on a Saturday;~~
- ~~(4) President's Day, the third Monday in February;~~
- ~~(5) Good Friday;~~
- ~~(6) Memorial Day, the last Monday in May;~~
- ~~(7) Independence Day, July 4;~~
- ~~(8) Monday, July 5, when July 4 (Independence Day) falls on a Sunday;~~
- ~~(9) Friday, July 3, when July 4 (Independence Day) falls on a Saturday;~~
- ~~(10) Labor Day, the first Monday in September;~~
- ~~(11) Thanksgiving Day, the fourth Thursday in November;~~
- ~~(12) Christmas Day, December 25;~~
- ~~(13) Monday, December 26, when December 25 (Christmas Day) falls on a Sunday;~~
- ~~(14) Monday, December 27, when December 25 (Christmas Day) falls on a Saturday.~~

~~(b) Any association may, in addition to the holidays listed above, observe as a holiday any other day designated as a holiday by the association's Board of Directors. may operate on such days and during such hours, and may observe such holidays, as the association's board of directors shall designate."~~

Sec. 4. G.S. 54C-175 reads as rewritten:

"§ 54C-175. Holidays- Days and hours of operation.

~~(a) Each State and federal savings bank, including every branch or office thereof, domiciled in North Carolina shall observe the following as legal holidays and shall not open for the transaction of business with the public on those days:~~

- ~~(1) New Year's Day, January 1;~~
- ~~(2) Monday, January 2, when January 1, New Year's Day, falls on Sunday;~~

- (3) ~~Monday, January 3, when January 1, New Year's Day, falls on a Saturday;~~
- (4) ~~President's Day, the third Monday in February;~~
- (5) ~~Good Friday;~~
- (6) ~~Memorial Day, the last Monday in May;~~
- (7) ~~Independence Day, July 4;~~
- (8) ~~Monday, July 5, when July 4, Independence Day, falls on a Sunday;~~
- (9) ~~Friday, July 3, when July 4, Independence Day, falls on a Saturday;~~
- (10) ~~Labor Day, the first Monday in September;~~
- (11) ~~Thanksgiving Day, the fourth Thursday in November;~~
- (12) ~~Christmas Day, December 25;~~
- (13) ~~Monday, December 26, when December 25, Christmas Day, falls on a Sunday;~~
- (14) ~~Monday, December 27, when December 25, Christmas Day, falls on a Saturday.~~

~~(b) A savings bank may, in addition to the holidays listed in subsection (a) of this section, observe as a holiday any other day designated as a holiday by the savings bank's board of directors, may operate on such days and during such hours, and may observe such holidays, as the savings bank's board of directors shall designate."~~

Sec. 5. This act becomes effective September 1, 1996.

In the General Assembly read three times and ratified this the 10th day of June, 1996.

H.B. 1190

CHAPTER 557

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE LEGISLATIVE RESEARCH COMMISSION'S FINANCIAL INSTITUTIONS ISSUES COMMITTEE TO AMEND THE NORTH CAROLINA RECIPROCAL INTERSTATE BANKING ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 17 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-212.1. Bank agent for deposit institution affiliate.

A bank that is a subsidiary of a bank holding company may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking Act. The General Assembly of North Carolina enacts:

Banking and Branching Efficiency Act of 1994."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1996.

H.B. 1230

CHAPTER 558

AN ACT TO AMEND THE CHARTER OF MAGGIE VALLEY DEALING
WITH LAND-USE POWERS AND TO REFLECT THAT THE TOWN
HAS ADOPTED THE MANAGER FORM OF GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1-1 of the Charter of the Town of Maggie Valley, being Chapter 1337 of the 1973 Session Laws, as amended by Section 35.1 of Chapter 636 of the 1983 Session Laws, reads as rewritten:

"Sec. 1-1. Incorporation and Corporate Powers: The inhabitants of the Town of Maggie Valley are a body corporate and politic under the name of the 'Town of Maggie Valley'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina; ~~provided, the Town shall have no authority to exercise beyond its corporate limits any of the powers granted by Article 19 of Chapter 160A of the General Statutes, Carolina.~~"

Sec. 2. Section 5-1 of the Charter of the Town of Maggie Valley, being Chapter 1337 of the 1973 Session Laws, reads as rewritten:

"Sec. 5-1. Town to operate under ~~mayor-council~~ council-manager plan. The Town of Maggie Valley operates under the ~~mayor-council~~ council-manager plan as provided in ~~G.S. Chapter 160A, Article 7, Part 3. Part 2 of Article 7 of Chapter 160A of the General Statutes.~~"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1996.

S.B. 1243

CHAPTER 559

AN ACT TO ESTABLISH A NO-WAKE ZONE ON A PORTION OF
LAKE HICKORY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to operate a vessel at greater than a no-wake speed in the small cove lying between Gull Cove Lane and Quiet Cove Lane on Lake Hickory in Catawba County. No-wake speed is idle speed or a slow speed creating no appreciable wake.

Sec. 2. With regard to marking the no-wake speed zone established in Section 1 of this act, Catawba County or its designee may place and maintain the markers in accordance with the Uniform Waterway Marking System and any supplementary standards for that system adopted by the Wildlife Resources Commission. All markers of the no-wake speed zone must be buoys or floating signs placed in the water and must be sufficient in number and size so as to give adequate warning of the no-wake speed zone to vessels approaching from various directions.

Sec. 3. This act is enforceable under G.S. 75A-17 as if it were a provision of Chapter 75A of the General Statutes.

Sec. 4. Violation of this act is a Class 3 misdemeanor.

Sec. 5. This act is effective upon ratification, and is enforceable after markers complying with Section 2 of this act are placed in the water.

In the General Assembly read three times and ratified this the 11th day of June, 1996.

H.B. 1119

CHAPTER 560

AN ACT TO DELETE THE REQUIREMENT THAT A COMPANY ADD BACK TO ITS NET WORTH FRANCHISE TAX BASE THE AMOUNT OF ITS LOANS THAT ARE PAYABLE TO AN UNRELATED COMPANY BUT ARE ENDORSED OR GUARANTEED BY A RELATED COMPANY, AS RECOMMENDED BY THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-122(b) reads as rewritten:

"(b) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of purchasing and installing equipment or constructing facilities for

the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources certifying that the Department of Environment, Health, and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment, Health, and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955. Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof. In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus and undivided profits all indebtedness owed to ~~or endorsed or guaranteed by~~ a parent, subsidiary or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. The term 'indebtedness' as used in this paragraph ~~shall include~~ includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms 'parent,' 'subsidiary,' and 'affiliate' as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary or affiliate, the debtor corporation, which is required under this paragraph to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the said creditor corporation, may deduct from the debt thus included a proportionate part determined on the basis of the ratio of such borrowed capital as above specified of the creditor corporation to the total assets of the said creditor corporation. Further, in case the creditor corporation as above specified is also taxable under the provisions of this section, such creditor corporation shall be allowed to deduct from the total of its capital, surplus and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the

extent that such debt has been included in the tax base of said parent, subsidiary or affiliated debtor corporation reporting for taxation under the provisions of this section."

Sec. 2. This act is effective for taxable years beginning on or after October 1, 1996.

In the General Assembly read three times and ratified this the 12th day of June, 1996.

S.B. 1116

CHAPTER 561

AN ACT TO ALLOW PERSONS WHO ARE UNABLE TO GO TO THE POLLS BECAUSE OF OBSERVANCE OF A RELIGIOUS HOLIDAY TO CAST AN ABSENTEE BALLOT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-226(a) reads as rewritten:

"(a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

- (1) ~~He~~ The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which ~~he~~ the voter desires to vote; ~~or~~
- (2) ~~He~~ The voter is unable to be present at the voting place to vote in person on the day of the specified election in which ~~he~~ the voter desires to vote because of ~~his~~ the voter's sickness or other physical disability; ~~or~~
- (3) ~~He~~ The voter is incarcerated, whether in ~~his~~ the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of ~~his~~ the voter's residence in any election, specified herein, in which ~~he~~ the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;
- (3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or
- (4) ~~He~~ The voter is an employee of the county board of elections and ~~his~~ the voter's assigned duties on the day of the election will cause ~~him~~ the voter to be unable to be present at the voting place to vote in person and provided such employee has ~~his~~ the

application witnessed by the chairman of the county board of elections."

Sec. 2. G.S. 163-227(a)(1) reads as rewritten:

"(1) A voter expecting to be absent from the county of his residence all day on the day of the specified ~~election~~, election, or who is otherwise entitled to cast an absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a) or 163-226(a)(4). (G.S. 163-226(a)(4))."

Sec. 3. G.S. 163-227(b)(1) reads as rewritten:

"(1) Expected Absence from County on Election ~~Day~~, Day, or other Permitted Reason. -- A voter expected to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections. The provisions of this subdivision also apply with respect to persons entitled to vote by absentee ballot under G.S. 163-226(a)(3), 163-226(a)(3a), or 163-226(a)(4).

The applicant shall sign his application personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections."

Sec. 4. G.S. 163-227.2(a) reads as rewritten:

"(a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under ~~G.S. 163-226(a)(2)~~ G.S. 163-226(a)(2), 163-226(a)(3a), or G.S. 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section."

Sec. 5. G.S. 163-229(b)(2) reads as rewritten:

"(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

'Certificate of Absentee or Sick Voter

State of

County of

I,, do certify that I am a resident and registered voter in precinct,

County, North Carolina; that on the day of an election,, 19 (check whichever of the following statements is correct.)

☐ I will be absent from the county in which I reside.

☐ Due to sickness or physical disability, or incarceration as a misdemeanor, I will be unable to travel to the voting place in the precinct in which I reside.

☐ Due to the observance of a religious holiday pursuant to the tenets of my religion, I will be unable to cast a ballot at the polling place on the day of the election.

I further certify that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.

.....
(Signature of voter)

.....
Signature of Witness #1

.....
Signature of Witness #2

.....
Address of Witness #1

.....
Address of Witness #2, "

Sec. 5. This act becomes effective with respect to elections conducted on or after January 1, 1997.

In the General Assembly read three times and ratified this the 17th day of June, 1996.

S.B. 1169

CHAPTER 562

AN ACT TO ALLOW THE CUMBERLAND COUNTY BOARD OF EDUCATION TO PERMIT THE USE OF PUBLIC SCHOOL BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE NATIONAL FORENSICS LEAGUE TOURNAMENT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Cumberland County Board of Education may permit the use and operation of public school buses as the Board deems necessary from June 23, 1996, through June 28, 1996, for the transportation needs of persons associated with the National Forensics League Tournament hosted by the Cumberland County Schools.

State funds shall not be used for the use and operation of buses under this act.

The State of North Carolina shall incur no liability for any damages resulting from the use and operation of buses under this act. The

Cumberland County Board of Education shall carry liability insurance covering the use and operation of buses under this act.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1996.

S.B. 1203

CHAPTER 563

AN ACT TO ALLOW THE CITY OF BESSEMER CITY TO CONVEY CERTAIN DESCRIBED PROPERTY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Bessemer City may convey to the Bessemer City Chamber of Commerce, Inc., by private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property: Lots 21, 22, 23, and 24, Block 15, Section 3, Plat of Bessemer City as recorded in the Gaston County Register of Deeds Office in Plat Book 1 at page 75.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1996.

S.B. 1246

CHAPTER 564

AN ACT TO REPEAL A SECTION OF THE CHARTER OF THE TOWN OF LANDIS RELATING TO ABC IN CONFLICT WITH GENERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 11.1 of the Charter of the Town of Landis, codified as Chapter 213 of the 1975 Session Laws, is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1996.

S.B. 1245

CHAPTER 565

AN ACT CONCERNING THE DEFINITION OF SUBDIVISION FOR THE TOWN OF ROSE HILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-376 reads as rewritten:

"§ 160A-376. *Definition.*

For the purpose of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or

a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets; ~~and~~
- (4) ~~The~~ Within the corporate limits of the municipality, the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision ~~regulations, regulations;~~
- (5) Within the municipality's extraterritorial jurisdiction, the division of a tract of land in single ownership into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations; and
- (6) The division of land zoned either Highway-Business or Industrial where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations."

Sec. 2. This act applies to the Town of Rose Hill only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

S.B. 1267

CHAPTER 566

AN ACT TO ADD NEW HANOVER COUNTY TO THOSE COUNTIES
IN WHICH A TENANT'S REFUSAL TO PERFORM A CONTRACT
FOR THE RENTAL OF LAND IS GROUNDS FOR DISPOSSESSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-27 reads as rewritten:

"§ 42-27. *Local: Refusal to perform contract ground for dispossession.*

When any tenant or cropper who enters into a contract for the rental of land for the current or ensuing year willfully neglects or refuses to perform the terms of his contract without just cause, he shall forfeit his right of possession to the premises. This section applies only to the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Jackson, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover,

Northampton, Onslow, Pasquotank, Pender, Perquimans, Pitt, Polk, Randolph, Robeson, Rockingham, Rowan, Rutherford, Sampson, Stokes, Surry, Swain, Tyrrell, Union, Wake, Warren, Washington, Wayne, Wilson, Yadkin."

Sec. 2. This act applies only to New Hanover County.

Sec. 3. This act is effective upon ratification and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1081

CHAPTER 567

AN ACT TO MODIFY THE MEMBERSHIP, QUALIFICATIONS FOR APPOINTMENT, AND TERMS OF THE TRUSTEES FOR ALBEMARLE HOSPITAL IN PASQUOTANK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 203 of the 1959 Session Laws, as amended by Section 1 of Chapter 140 of the 1989 Session Laws, reads as rewritten:

"Section 1. ~~G.S. 131-28.8 [now G.S. 131E-18]~~ G.S. 131E-18 is amended by adding at the end thereof the following:

(a) In Pasquotank County the Board of Commissioners of said county shall appoint a Board of Trustees for Albemarle Hospital, consisting of ~~ten~~ 15 members, five of whom shall be appointed from Elizabeth City ~~Township~~; Township, five of whom shall be appointed from elsewhere within Pasquotank County, and one member each shall be appointed from the counties of Camden, Currituck, Dare, Gates, and Perquimans; five members of said board shall be appointed for a term of one year each, and five members of said board shall be appointed for a term of two years each. At the end of their respective terms their successors shall be appointed for terms of two years each. Any vacancy on the board of trustees shall be filled by the board of commissioners for the unexpired term. The appointments of the members of the Board of Trustees of Albemarle Hospital heretofore made by the Board of Commissioners of Pasquotank and all acts and things done by said trustees by virtue of their appointments are hereby validated.

(b) For the initial appointments of members from the counties of Camden, Currituck, Dare, Gates, and Perquimans, three shall be appointed for one-year terms and two for terms of two years, to achieve staggered terms. All subsequent appointments shall be for two-year terms.

(c) The members shall elect their chair. The chair shall reside in Pasquotank County."

Sec. 2. This act shall apply only to Pasquotank County.

Sec. 3. This act becomes effective August 1, 1996, and expires July 31, 2000.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1133

CHAPTER 568

AN ACT TO PERMIT ONE-STOP VOTING ON DIRECT RECORD VOTING EQUIPMENT IN PASQUOTANK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 197 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act applies only to Gaston, Guilford, Mecklenburg, and Union Counties. Section 1 of this act also applies to Pasquotank County."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1136

CHAPTER 569

AN ACT TO ALLOW CRAVEN COUNTY AND THE CITIES OF NEW BERN AND HAVELOCK TO DONATE UNCLAIMED BICYCLES TO CHARITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of ~~Asheville~~ Asheville, Havelock, New Bern, and Hendersonville only."

Sec. 2. (a) Notwithstanding Article 2 of Chapter 15 of the General Statutes or Article 12 of Chapter 160A of the General Statutes, whenever unclaimed bicycles are in the possession of the sheriff department, no earlier than 30 days after the date of publication of the notice required by G.S. 15-12, the sheriff may donate the bicycles to a charitable organization exempt under section 501(c)(3) of the Internal Revenue Code rather than selling the bicycles as provided by law. In such case, the notice required by G.S. 15-12 shall state the intended disposition of the bicycles if they are not claimed.

(b) This section applies to Craven County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1185

CHAPTER 570

AN ACT TO PROVIDE STAGGERED TERMS FOR MEMBERS OF THE BOARD OF COMMISSIONERS OF THE TOWN OF LUMBER BRIDGE AND PROVIDE A FOUR-YEAR TERM FOR THE MAYOR.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 99 of the Private Laws of 1911, as rewritten by Chapter 226 of the Session Laws of 1967, is rewritten to read:

"Sec. 6. (a) The Mayor shall be elected in 1997 and quadrennially thereafter for a four-year term.

(b) In 1997, four members of the Board of Commissioners shall be elected. The two persons receiving the highest numbers of votes are elected for four-year terms, and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 1999 and biennially thereafter, two members of the Board of Commissioners are elected for four-year terms.

(c) Elections in the Town of Lumber Bridge shall be elected in accordance with general law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1298

CHAPTER 571

AN ACT REGARDING REQUIREMENTS FOR SPRINKLER SYSTEMS
IN FRATERNITY AND SORORITY HOUSES IN THE TOWNS OF
CHAPEL HILL AND CARRBORO AND THEIR
EXTRATERRITORIAL PLANNING JURISDICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of the State Building Code or any public or local law to the contrary, including, but not limited to, Chapter 143 of the General Statutes, a town may require by ordinance the installation of sprinkler systems in all fraternity and sorority houses within the corporate limits of the town or within the town's extraterritorial planning jurisdiction, such installation to be completed, as provided in such ordinance, within a reasonable period of time, to be determined at the time of adoption of such ordinance, following the effective date of such ordinance.

Sec. 2. This act applies to the Towns of Chapel Hill and Carrboro only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

H.B. 1339

CHAPTER 572

AN ACT TO IMPROVE WATER QUALITY BY ESTABLISHING A
GOAL TO REDUCE THE AVERAGE LOAD OF NITROGEN
DELIVERED TO THE NEUSE RIVER ESTUARY FROM POINT AND
NONPOINT SOURCES BY A MINIMUM OF THIRTY PERCENT OF
THE AVERAGE ANNUAL LOAD FOR THE PERIOD 1991
THROUGH 1995 BY THE YEAR 2001 AND TO REQUIRE THE
ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP
A PLAN TO ACHIEVE THIS GOAL, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly hereby determines that it should be the goal of this State to reduce the average annual load of nitrogen delivered to the Neuse River Estuary from point and nonpoint sources by a minimum of thirty percent (30%) of the average annual load for the period 1991 through 1995 by the year 2001 and any further reductions that may be achieved to protect water quality, with incremental progress demonstrated each year. The Environmental Management Commission shall develop and adopt a plan to achieve this goal. In developing this plan, the Commission shall determine and allow appropriate credit toward achieving this goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

Sec. 2. The Commission shall publish a proposed plan to achieve the goal established by this act in the North Carolina Register by 1 November 1996. The Commission shall adopt the plan as provided in Article 2A of Chapter 150B of the General Statutes.

Sec. 3. The Environmental Management Commission shall annually report to the Environmental Review Commission as to its progress in developing and adopting the plan required by this act and as to progress in implementing the plan and achieving the goal established by this act. The Environmental Management Commission shall make its initial report to the Environmental Review Commission on or before 1 November 1996.

Sec. 4. The Commission may adopt temporary rules to implement the provisions of this act.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

S.B. 1181

CHAPTER 573

AN ACT TO ALLOW UTILITY POLES CARRIED ON SIDE-LOADERS TO EXTEND MORE THAN THREE FEET BEYOND THE FRONT BUMPER OF THE VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-116(f) reads as rewritten:

"(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the ~~front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper,~~ foremost part of the vehicle. Under this subsection 'load' shall include the boom on a self-propelled vehicle.

A utility pole carried by a self-propelled pole carrier may extend beyond the front overhang limit set in this subsection if the pole cannot be dismembered, the pole is less than 80 feet in length and does not extend more than 10 feet beyond the front bumper of the vehicle, and either of the following circumstances apply:

- (1) It is daytime and the front of the extending load of poles is marked by a flag of the type required by G.S. 20-117 for certain rear overhangs.

- (2) It is nighttime, operation of the vehicle is required to make emergency repairs to utility service, and the front of the extending load of poles is marked by a light of the type required by G.S. 20-117 for certain rear overhangs.

As used in this subsection, a 'self-propelled pole carrier' is a vehicle designed to carry a pole on the side of the vehicle at a height of at least five feet when measured from the bottom of the brace used to carry the pole. A self-propelled pole carrier may not tow another vehicle when carrying a pole that extends beyond the front overhang limit set in this subsection."

Sec. 2. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 19th day of June, 1996.

S.B. 1176

CHAPTER 574**AN ACT TO MODIFY THE REQUIREMENTS FOR MAKING STREET ASSESSMENTS IN FOXFIRE VILLAGE UNDER CERTAIN CIRCUMSTANCES.**

The General Assembly of North Carolina enacts:

Section 1. The Charter of Foxfire Village, being Chapter 237 of the 1977 Session Laws, is amended by adding a new Article to read:

"ARTICLE VIII.

"STREET ASSESSMENTS.

"Sec. 8.1. Street Assessments.

(a) In addition to any authority which is now or hereafter may be granted by general law to the town for making street improvements, the Village Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Village Council may order street improvements and assess the cost thereof against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition meeting the requirements of that Article, upon the finding by the Village Council as a fact that:

- (1) The street improvement project does not exceed 30,000 lineal front footage;
- (2) The street improvement project involves no more than 200 lots;
- (3) The street improvement project consists of a series of streets all of which are contiguous to at least one other street in the project;
- (4) The street improvement project abuts at least one other paved street in the Village;
- (5) The street improvement project consists solely of a collection of streets for which petitions under Article 10 of Chapter 160A of the General Statutes were received within two years before a preliminary assessment resolution is adopted under the authority of this Article, in accordance with G.S. 160A-223, where:
 - a. The petitions taken as a whole were signed by at least forty percent (40%) of the owners of property to be assessed, who represent at least forty percent (40%) of all the lineal front

footage of the lands abutting on the streets or portions thereof to be improved; but

- b. Where for at least five streets in the project, the petitions were signed by at least two-thirds of the owners of property to be assessed, who represent at least two-thirds of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In ordering street improvements without a petition and assessing the cost thereof under authority of this Article, the Village Council shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof. Any assessment under the authority of this act must be under a preliminary assessment resolution adopted under G.S. 160A-223 no later than December 31, 1998.

(e) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 361

CHAPTER 575

AN ACT TO AMEND THE SECTION 108 LOAN GUARANTEE PROGRAM LAWS AND THE LAWS GOVERNING INDUSTRIAL REVENUE BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-431(d) reads as rewritten:

"(d) The Department of Commerce, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual and may comply with the terms, conditions, and limitations of such grants in order to accomplish the Department's purposes. Grant funds shall be expended pursuant to the Executive Budget Act. In addition, the Department shall have the following powers and duties with respect to its duties in administering federal programs:

- (1) To negotiate, collect, and pay reasonable fees and charges regarding the making or servicing of grants, loans, or other evidences of indebtedness.
- (2) To establish and revise by regulation, in accordance with Chapter 150B of the General Statutes, schedules of reasonable rates, fees, or charges for services rendered, including but not limited to, reasonable fees or charges for servicing applications. Schedules of rates, fees, or charges may vary according to classes of service,

and different schedules may be adopted for public entities, nonprofit entities, private for-profit entities, and individuals.

- (3) To pledge current and future federal fund appropriations to the State from the Community Development Block Grant (CDBG) program for use as loan guarantees in accordance with the provisions of the Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700, et seq., authorized by the Housing and Community Development Act of 1974 and amendments thereto. The Department may enter into loan guarantee agreements in support of projects sponsored by individual local governments or in support of pools of two or more projects supported by local governments with authorized State and federal agencies and other necessary parties in order to carry out its duties under this subdivision. In making loan guarantees and grants under this subdivision the Department shall take into consideration project applications, geographic diversity and regional balance in the entire community development block grant program. In making loan guarantees authorized under this subdivision, the Department shall ensure that apportionment of the risks involved in pledging future federal funds in accordance with State policies and priorities for financial support of categories of assistance is made primarily against the category from which the loan guarantee originally derived. A pledge of future CDBG funds under this subdivision is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subdivision does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes, nor may pledges exceed twice the amount of annual CDBG funds.

Prior to issuing a Section 108 Loan Guarantee agreement, the Department of Commerce must make the following findings:

- a. The minimum size of the Section 108 Loan Guarantee is (i) seven hundred fifty thousand dollars (\$750,000) for a project supported by an individual local government and (ii) two hundred fifty thousand dollars (\$250,000) for a project supported as part of a loan pool; and the maximum size is five million dollars (\$5,000,000) per project.
- b. The Section 108 Loan Guarantee cannot constitute more than fifty percent (50%) of total project costs.
- c. The project has ~~twenty-five percent (25%)~~ ten percent (10%) equity from the corporation, partnership, or sponsoring party. 'Equity' means cash, real estate, or other hard assets contributed to the project and loans that are subordinated in payment and collateral during the term of the Section 108 Loan Guarantee.
- d. The project has the personal guarantee of any person owning ten percent (10%) or more of the corporation, partnership, or sponsoring ~~entity.~~ entity, except for projects involving Low-

Income Housing Tax Credits under section 42 of the Internal Revenue Code or Historic Tax Credits under section 47 of the Internal Revenue Code. Collateral on the loan must be sufficient to cover outstanding debt obligations.

- e. The project has sufficient cash flow from operations for debt service to repay the Section 108 loan.
- f. The project meets all underwriting and eligibility requirements of the North Carolina Section 108 Guarantee Program Guidelines and of the Department of Housing and Urban Development regulations, except that projects involving hotels, motels, private recreational facilities, private entertainment facilities, and convention centers are ineligible for Section 108 loan guarantees.

The Department shall create a loan loss reserve fund as additional security for loans guaranteed under this section and may deposit federal program income or other funds governed by this section into the loan loss reserve fund. The Department shall maintain a balance in the reserve fund of no less than ten percent (10%) of the outstanding indebtedness secured by Section 108 loan guarantees."

Sec. 2. G.S. 153A-376(g) reads as rewritten:

"(g) Any county may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any county that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A county may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any county that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes."

Sec. 3. G.S. 160A-456(d1) reads as rewritten:

"(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A city may implement

the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes."

Sec. 4. G.S. 159C-3(6) reads as rewritten:

"(6) 'Financing agreement' shall mean a written instrument establishing the rights and responsibilities of the ~~authority and the operator~~ authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds."

Sec. 5. G.S. 159C-3(7) reads as rewritten:

"(7) 'Obligor' shall mean ~~collectively the operator and any others~~ any person or persons, which may include the operator, who shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor."

Sec. 6. G.S. 159C-7 reads as rewritten:

"§ 159C-7. *Approval of project.*

No bonds may be issued by an authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

- (1) In the case of a proposed industrial project,
 - a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county, or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and
 - b. That the proposed project will not have a materially adverse effect on the environment;

- (2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and
- (2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.
- (3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,
 - a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,
 - b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and
 - c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project. In no case shall the Secretary of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Commerce make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that

the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section."

Sec. 7. G.S. 159C-8 reads as rewritten:

"§ 159C-8. *Approval of bonds.*

No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

- (1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its

stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

- (2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.
- (3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (1) only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. ~~The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued.~~ To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section."

Sec. 8. G.S. 159C-11 reads as rewritten:

"§ 159C-11. *Financing agreements.*

Every financing agreement shall provide that:

- (1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds that shall be issued by the authority to pay the cost of the project as the same shall respectively become due;
- (2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;
- (3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and
- (4) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement

until such payment of the bonds or provision therefor shall be made.

- (5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (1)a. and (3)b. of G.S. 159C-7 and of the Local Government Commission under G.S. 159C-8.

The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor shall have an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision therefor, shall have been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor thereunder including, without limitation, any one or more of the following:

- (1) Acceleration of all amounts payable under the financing agreement;
- (2) Reentry and repossession of the project;
- (3) Termination of the financing agreement;
- (4) Leasing or sale or foreclosure of the project to others; and
- (5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

Any such financing agreement may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this Chapter."

Sec. 9. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1112

CHAPTER 576

AN ACT TO AUTHORIZE THE TOWN OF MAXTON TO CONVEY CERTAIN PROPERTY AT PRIVATE SALE TO THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., A NONPROFIT CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the Town of Maxton may convey at private sale, with or without monetary consideration, any or all of its right, title, and interest in the Patterson Building property, consisting of an historic flatiron structure and land located in the Town of Maxton, and more particularly described in a deed recorded at Book 873, Page 530 of the Robeson County Registry, to The Historic Preservation Foundation of North Carolina, Inc., a nonprofit corporation.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1130

CHAPTER 577

AN ACT TO AUTHORIZE THE COUNTIES OF CAMDEN, CHOWAN, CURRITUCK, PASQUOTANK, PERQUIMANS, TYRRELL, AND WASHINGTON TO TAKE A LIEN ON REAL PROPERTY FOR DELINQUENT FEES FOR CERTAIN INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, a county may adopt an ordinance providing that any fees for the annual inspection of provisional septic tanks or other innovative septic systems approved by the county on a provisional basis may be billed as property taxes, may be payable in the same manner as property taxes, and in the case of nonpayment, may be collected in any manner by which property taxes can be collected. If the ordinance states that delinquent fees can be collected in the same manner as real property taxes, the fees are a lien on the real property described on the bill that includes the fee.

Sec. 2. This act applies to the Counties of Camden, Chowan, Currituck, Pasquotank, Perquimans, Tyrrell, and Washington only.

Sec. 3. This act becomes effective July 1, 1996, and applies to fees imposed for inspections performed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1177

CHAPTER 578

AN ACT TO ALLOW THE MERGER OF THE TOWN OF BATTLEBORO INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. (a) The Town of Battleboro and the City of Rocky Mount may, by ordinances approved by the governing board of both units, merge the Town of Battleboro into the City of Rocky Mount. The ordinances need not provide for any referendum on the merger.

(b) The ordinances may provide that the merger is effective only if approved by the qualified voters of the Town of Battleboro.

(c) If a referendum is held on the proposed merger, it may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 50 days before and ending 50 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law.

The proposition submitted to the voters shall be in the form approved by the ordinance.

Sec. 2. (a) On the effective date of the merger, all property, real and personal and mixed, including accounts receivable, belonging to the Town of Battleboro, shall by operation of law vest in, belong to, and be the property of the City of Rocky Mount. The governing body of the Town of Battleboro shall take such additional actions and execute such documents as will carry into effect the provisions and the intent of this section.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Battleboro shall vest in and remain and inure to the benefit of the City of Rocky Mount.

(c) All taxes, assessments, water or sewer charges, and any other charges or fees, owing to the Town of Battleboro shall be owed to and collected by the City of Rocky Mount.

(d) All actions, suits, and proceedings pending against, or having been instituted by the Town of Battleboro shall not be abated by this act or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and the City of Rocky Mount shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Battleboro and shall pay or cause to be paid any judgments rendered against the Town of Battleboro in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(e) All obligations of the Town of Battleboro, including outstanding indebtedness, shall be assumed by the City of Rocky Mount, and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the City of Rocky Mount.

(f) The zoning ordinance of the Town of Battleboro adopted under Article 19 of Chapter 160A of the General Statutes shall continue in full force and effect within the area to which it applies and shall be enforced by the City of Rocky Mount until such time as the City of Rocky Mount adopts an ordinance under Article 19 of Chapter 160A of the General Statutes zoning such area.

(g) All franchises heretofore granted by the Town of Battleboro, which are still in force shall continue as valid franchises of the City of Rocky Mount for the purposes granted within the area formerly comprising the Town of Battleboro, but shall not hereby be constituted valid franchises for any other portion of the corporate limits of the City of Rocky Mount.

(h) The City of Rocky Mount shall assume responsibility for all current and future liabilities of the Town of Battleboro for unemployment insurance benefit charges under G.S. 96-9(f)(1).

Sec. 3. The Charter of the City of Rocky Mount, being Chapter 938, Session Laws of 1963, is amended by adding the following new section:

"Sec. 2.1. The corporate limits of the City of Rocky Mount also include all areas within the corporate limits of the Town of Battleboro on the date the Town of Battleboro was merged into the City of Rocky Mount."

Sec. 4. The Town of Battleboro is merged into the City of Rocky Mount. The Town of Battleboro is abolished as a separate municipal corporation.

Sec. 5. The effective date of the merger is any of the following dates as selected by the ordinance:

- (1) June 30, 1996;
- (2) July 1, 1996;
- (3) June 30, 1997; or
- (4) July 1, 1997.

Sec. 6. All property that had a tax situs in the Town of Battleboro on January 1 of the year of merger shall be considered to have a tax situs in the City of Rocky Mount for the appropriate fiscal year and any property properly listed for taxation in the Town of Battleboro is properly listed for taxation in the City of Rocky Mount.

Sec. 7. The Charter of the City of Rocky Mount, being Chapter 938 of the 1963 Session Laws, is amended by adding a new section to read:

"Sec. 302.1. The area in the extraterritorial jurisdiction of the Town of Battleboro for the purposes of Article 19 of Chapter 160A of the General Statutes is placed in the extraterritorial jurisdiction of the City of Rocky Mount for the purposes of that Article, Articles 1 and 2 of Chapter VIII of this Charter, and any similar provisions of this Charter."

Sec. 8. (a) Approval of any ordinance to merge the Town of Battleboro into the City of Rocky Mount has the effect of extending the corporate limits of the City of Rocky Mount to include the following described area as of a date specified in the ordinance adopted by the City of Rocky Mount, but not later than July 1, 1997:

SUB AREA 1

BIRCHFIELD LEGAL DESCRIPTION

Beginning at a point on the eastern boundary line of the Town of Battleboro where the eastern boundary line intersects the northern right of way of Thomas Street, the POINT OF BEGINNING: said point being located the following two courses and distances: From N.C.G.S. Monument Battleboro, North American Datum of 1983 Coordinates N = 838,922.371 USFT E = 2,369,677.383 USFT and thence N 48° 10' 27" E horizontal ground distance of 1991.85 feet to the northeast corner of the original boundary of The Town of Battleboro; thence along the eastern line of The Town of Battleboro S 00° 44' 38" E 236.66 feet to a point on the northern right of way of Thomas Street, the POINT OF BEGINNING; thence along the northern right of way of Thomas Street S 69° 28' 29" E 353.02 feet to a point on the eastern right of way of S.R. 1411; thence along the eastern right of way of S.R. 1411 a curve being concave to the right having a radius of 1395.15 feet and a chord bearing and distance of S 38° 35' 14" W 238.66 feet to a point, thence cornering S 66° 54' 43" E 915.55 feet to a point, thence S 23° 45' 59" W 527.85 feet to a point, thence S 66° 54' 43" E 227.79 feet to a point, thence S 00° 26' 43" E 1226.59 feet to a point, thence N 81° 08' 16" E 651.30 feet to a point, thence S 01° 08' 45"

E 356.83 feet to a point, thence N 88° 51' 15" E 150.01 feet to a point, thence S 01° 08' 45" E 370.00 feet to a point, thence S 88° 51' 15" W 225.00 feet to a point, thence S 01° 08' 45" E 205.29 feet to a point on the southern right of way of Morningstar Church Road; thence along the southern right of way of Morningstar Church Road S 87° 01' 48" W 558.90 feet to a point of curvature; thence along a curve being concave to the left having a radius of 1170 feet and a chord bearing and distance of S 73° 51' 11" W 533.42 feet to a point of tangency; thence S 60° 40' 35" W 334.47 feet to a point on the western right of way of S.R. 1407; thence along the western right of way of S.R. 1407 N 32° 42' 39" W 852.89 feet to a point, thence S 82° 56' 25" W 462.97 feet to a point on the western right of way of Old Battleboro Road; thence along the western right of way of Old Battleboro Road N 11° 48' 27" E 583.64 feet to a point where said right of way intersects the southern boundary line of The Town of Battleboro; thence along the southern boundary line of the Town of Battleboro N 89° 15' 22" E 576.84 feet to a point, thence continuing along the eastern boundary line of The Town of Battleboro N 00° 44' 38" W 2403.22 feet to the point of beginning and containing 92.38 acres more or less.

SUB AREA 2

WALKERTOWN LEGAL DESCRIPTION

Beginning at a point on the original northern boundary line of The Town of Battleboro where it intersects the western right of way of the CSX Railroad, the POINT OF BEGINNING; said point being located the following two courses and distances: From N.C.G.S. Monument Battleboro, North American Datum of 1983 Coordinates N = 838,922.371 USFT E = 2,369,677.383 USFT and thence N 48° 10' 27" E horizontal ground distance of 1991.85 feet to the northeast corner of the original boundary of The Town of Battleboro; thence along the northern line of The Town of Battleboro S 89° 15' 22" W 813.70 feet to a point on the western right of way of the CSX Railroad, the POINT OF BEGINNING; thence from the POINT OF BEGINNING continuing along the northern line of The Town of Battleboro S 89° 15' 22" W 1018.02 feet to a point on the western right of way of U. S. Highway 301; thence along the northern right of way of U. S. Highway 301 the following ten courses and distances: N 25° 27' 39" E 80.10 feet to a point, N 25° 16' 13" E 103.64 feet to a point, N 24° 47' 32" E 101.84 feet to a point, N 22° 06' 25" E 97.43 feet to a point, N 17° 37' 43" E 101.67 feet to a point, N 12° 37' 41" E 100.63 feet to a point, N 07° 09' 34" E 102.29 feet to a point, N 03° 25' 31" E 12.17 to a point, N 03° 25' 31" E 87.66 feet to a point, N 02° 00' 08" E 107.10 feet to a point; thence cornering and crossing U.S. Highway 301 S 87° 59' 52" E 60.00 to a point on the eastern right of way of U.S. Highway 301 where it intersects the northern right of way of Cobb Street; thence along the northern right of way of Cobb Street the following three courses and distances: S 80° 51' 23" E 62.20 feet to a point, S 87° 41' 41" E 330.02 feet to a point, and S 02° 18' 19" W 22.50 feet to a point, thence S 87° 41' 41" E 116.33 feet to a point in the western line of E.B. Grain Company, thence along E. B. Grain Company's western line S 01° 18' 02" E 488.71 feet to a point, thence along E. B. Grain Company's southern line

S 70° 09' 44" E 309.12 feet to a point on the western right of way of the CSX Railroad; thence along the western right of way of the CSX Railroad S 23° 26' 55" W 210.29 feet to the point of beginning and containing 13.78 acres more or less.

(b) From and after the effective date of the extension of the corporate limits under subsection (a) of this section, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Rocky Mount and shall be entitled to the same privileges and benefits as other parts of the City of Rocky Mount, and the provisions of G.S. 160A-49.1 governing contracts with rural fire departments and the provisions of G.S. 160A-49.3 governing contracts with private solid waste collection firms shall be applicable to such territory.

Sec. 9. The following acts, being the Charter of the Town of Battleboro, are repealed:

- (1) Chapter 99, Private Laws of 1871-72
- (2) Chapter 68, Private Laws of 1873-74
- (3) Chapter 215, Private Laws of 1915
- (4) Chapter 292, Session Laws of 1955
- (5) Chapter 580, Session Laws of 1969.

Sec. 10. Sections 2 through 9 of this act become effective only if the Town of Battleboro is merged into the City of Rocky Mount under Section 1 of this act.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1192

CHAPTER 579

AN ACT TO DEVELOP A PROPOSAL FOR A RESERVE FUND TO PAY CATASTROPHIC LOSSES AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

Whereas, there is a compelling State interest in maintaining a viable and orderly private sector market for property insurance in the State; and

Whereas, mortgages require reliable property insurance, and the unavailability of reliable property insurance would therefore make most real estate transactions impossible; and

Whereas, the public health, safety, and welfare demand that structures damaged or destroyed in a catastrophe be repaired or reconstructed as soon as possible; and

Whereas, the inability of the private sector insurance and reinsurance markets to maintain sufficient capacity to enable residents of the beach area of the State to obtain property insurance coverage in the private sector endangers the economy of the State and endangers the public health, safety, and welfare; and

Whereas, many property insurers are unable or unwilling to maintain reserves, surplus, and reinsurance sufficient to enable the insurers to pay all claims in full in the event of a catastrophe and State action is necessary to

protect the public from an insurer's unwillingness or inability to maintain sufficient reserves, surplus, and reinsurance; and

Whereas, in order to increase insurance capacity, it is essential to the functioning of a State program that revenues received be exempt from federal taxation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Insurance and the North Carolina Insurance Underwriting Association shall study the feasibility of and develop a proposal for a reserve fund to operate exclusively for the purpose of paying catastrophic losses incurred by wind risks insured under policies issued by the Association and for protecting and advancing the State's interest in maintaining insurance capacity in the State. The Department and the Association shall consult with the Internal Revenue Service for the purpose of making the fund exempt from federal taxation and may consider other options, including the purchase of reinsurance, in connection with establishment of the fund. The Department and the Association shall report to the Legislative Research Commission's Study Committee on Insurance and Insurance-Related Issues on any findings and recommendations on or before October 1, 1996, and shall report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on the proposal on or before March 1, 1997.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1190

CHAPTER 580

AN ACT TO EXTEND THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE TOWN OF WALLACE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Wallace, being Chapter 94 of the 1987 Session Laws, is amended by adding a new section to read:

"Section 1.4. **Extraterritorial jurisdiction.** In addition to any areas where the Town of Wallace exercises territorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the town shall have territorial jurisdiction under that Article in the following described area:

In Duplin County, beginning at a point on the existing extraterritorial jurisdiction boundary line one-half mile south of the center line of NC Highway 41, and continuing from that point in an easterly direction along a route one-half mile south of the center line of NC Highway 41 to a point one-half mile east of the Interstate 40 eastern right-of-way boundary line; continuing from that point in a northwesterly direction along a route one-half mile east of the Interstate 40 eastern right-of-way boundary line to a point one-half mile north of the center line of NC Highway 11; continuing from that point in a southwesterly direction along a route one-half mile north of the center line of NC Highway 11 to a point where it intersects with

the existing extraterritorial jurisdiction boundary line; and including all of the area located within the described boundary."

Sec. 2. The provisions of G.S. 160A-360(f) shall apply to the area described in Section 1 of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1412

CHAPTER 581

AN ACT TO REINSTATE THE "NO WAKE ZONE" WITHIN ONE HUNDRED FIFTY YARDS OF SEAFOOD WORLD IN TOPSAIL SOUND AND TO REPEAL THE PROHIBITION ON "NO WAKE ZONES" IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the 1991 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1193

CHAPTER 582

AN ACT TO PROVIDE FOR MORE EFFECTIVE FINANCIAL SUPERVISION, REHABILITATION, AND LIQUIDATION PROCEDURES FOR CONTINUING CARE RETIREMENT CENTERS AND TO PROVIDE THAT CONTINUING CARE AGREEMENTS ARE SUBORDINATE TO THE COST OF ADMINISTRATION IN LIQUIDATION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-30-5(5) reads as rewritten:

"(5) All persons subject to Articles ~~65 through 67~~ 64, 65 and 66, or 67 of this Chapter; except to the extent there is a conflict between the provisions of this Article and the provisions of those Articles, in which case those Articles will govern."

Sec. 2. G.S. 58-30-10(14) reads as rewritten:

"(14) 'Insurer' means any entity licensed under Articles 7, 16, 26, 49, 65, or 67 of this Chapter and any employer that has furnished to the Commissioner satisfactory proof of its financial responsibility under G.S. 97-93(a)(2). For purposes of this Article, 'insurer' also includes continuing care retirement centers licensed under Article 64 of this Chapter."

Sec. 3. G.S. 58-64-45 reads as rewritten:

"§ 58-64-45. ~~Rehabilitation or Supervision, rehabilitation, and liquidation.~~

(a) If, at any time, the Commissioner determines, after notice and an opportunity for the provider to be heard, that:

- (1) A portion of an entrance fee escrow account required to be maintained under this Article has been or is proposed to be released in violation of this Article;
- (2) A provider has been or will be unable, in such a manner as may endanger the ability of the provider, to fully perform its obligations pursuant to contracts for continuing care, to meet the projected financial data previously filed by the provider;
- (3) A provider has failed to maintain the escrow account required under this Article; or
- (4) A facility is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent;

the Commissioner may commence a supervision proceeding pursuant to Article 30 of this Chapter or may apply to the Superior Court of Wake County or to the federal bankruptcy court that may have previously taken jurisdiction over the provider or facility for an order directing the Commissioner or authorizing the Commissioner to appoint a trustee to rehabilitate or to liquidate a facility, facility in accordance with Article 30 of this Chapter.

~~(b) An order to rehabilitate a facility shall direct the Commissioner or trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as the Commissioner or trustee may deem necessary and to take such steps as the Court may direct toward removal of the causes and conditions which have made rehabilitation necessary. The definition of 'insolvency' or 'insolvent' in G.S. 58-30-10(13) shall not apply to facilities under this Article. Rules adopted by the Commissioner shall define and describe 'insolvency' or 'hazardous financial condition' for facilities under this Article. G.S. 58-30-12 shall not apply to facilities under this Article.~~

~~(c) If, at any time, the Court finds, upon petition of the Commissioner, trustee Commissioner or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, the Court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and, by order, return the facility and its assets and affairs to the provider's management.~~

~~(d) If, at any time, the Commissioner determines that further efforts to rehabilitate the provider would be useless, the Commissioner may apply to the Court for an order of liquidation.~~

~~(e) An order to liquidate a facility:~~

- ~~(1) May be issued upon application of the Commissioner whether or not there has been issued a prior order to rehabilitate the facility.~~
- ~~(2) Shall act as a revocation of the license of the facility under this Article.~~
- ~~(3) Shall include an order directing the Commissioner or a trustee to marshal and liquidate all of the provider's assets located within this State.~~

(f) In applying for an order to rehabilitate or liquidate a facility, the Commissioner shall give due consideration in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

(g) An order for rehabilitation ~~under this section~~ shall be refused or vacated if the provider posts a bond, by a recognized surety authorized to do business in this State and executed in favor of the Commissioner on behalf of persons who may be found entitled to a refund of entrance fees from the provider or other damages in the event the provider is unable to fulfill its contracts to provide continuing care at the facility, in an amount determined by the Court to be equal to the reserve funding that would otherwise need to be available to fulfill such obligations."

Sec. 4. G.S. 58-64-60 reads as rewritten:

"§ 58-64-60. Agreements as preferred claims on liquidation.

In the event of liquidation of a provider, all continuing care agreements executed by the provider shall be deemed preferred claims against all assets owned by the provider; provided, however, such claims shall be subordinate to the liquidator's cost of administration or any secured claim."

Sec. 5. This act becomes effective October 1, 1996, and applies to continuing care retirement centers that are determined by the Commissioner of Insurance to be financially impaired on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 126

CHAPTER 583

AN ACT TO CREATE THE LONG-TERM CARE SUBCOMMITTEE AND TO PROVIDE FOR THE CREATION OF OTHER SUBCOMMITTEES OF THE NORTH CAROLINA STUDY COMMISSION ON AGING AND TO MAKE CHANGES TO THE LONG-TERM CARE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-186.1 reads as rewritten:

"§ 120-186.1. Commission; ~~Alzheimer's Subcommittee, Alzheimer's Subcommittee, Long-Term Care Subcommittee, and other subcommittees.~~

~~The Commission cochairmen shall appoint an Alzheimer's Subcommittee. The cochairmen shall appoint as members of the Subcommittee three Commission members and at least four but no more than six non-Commission members. The Commission shall prescribe the duties of the Alzheimer's Subcommittee which may include conducting studies on the availability and efficacy of currently existing geriatric or memory disorder services and programs, advising the Commission on matters regarding Alzheimer's services and programs, and recommending to the Commission solutions to related problems.~~

(a) The Commission cochairs shall appoint subcommittees as needed to assist with the completion of the work of the Commission. These subcommittees may include an Alzheimer's Subcommittee, a Long-Term Care Subcommittee, or other special subject subcommittees. The cochairs

shall appoint as members of any subcommittee not more than four Commission members and at least four but no more than six non-Commission members.

(b) The Commission cochaurs shall prescribe the duties of any subcommittee created. Duties of the Alzheimer's Subcommittee may include conducting studies on the availability and efficacy of currently existing geriatric or memory disorder services and programs, advising the Commission on matters regarding Alzheimer's services and programs, and recommending to the Commission solutions to related problems. Duties of the Long-Term Care Subcommittee may include developing a long-term care policy for the State that has at least the following elements:

- (1) Promotes elder independence, choice, and dignity;
- (2) Provides a seamless, uniform system of flexible and responsive services;
- (3) Provides single-entry access;
- (4) Includes a wide range of home and community-based services available to all elderly who need them but targeted primarily to the most frail, needy elderly;
- (5) Provides care and services at the least expense in the least confusing manner and based on the desires of the elder population and their families;
- (6) Expands Medicaid income eligibility to allow more services in the home and community;
- (7) Creates a single agency and budget stream to administer services to the elderly; and
- (8) Approaches long-term care within the context of the entire health care system."

Sec. 2. Part 14B of Article 3 of Chapter 143B of the General Statutes reads as rewritten:

"Part 14B. Long-Term Care.

"§ 143B-181.5. ~~Department to develop systems of long-term care.~~ Long-term care policy.

The Secretary of the Department of Human Resources shall develop effective systems of long-term care with interested counties to the extent that federal, State and local funds are available to support the expanded programs and services. The North Carolina General Assembly finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care provision continues to be the family and friends. However, these traditional caregivers are increasingly employed outside the home. There is growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The North Carolina General Assembly further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services in the home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The North Carolina General Assembly finds that as other long-term care options become more available, the relative need for institutional care will stabilize or decline relative to the growing aging population. The General Assembly recognizes, however, that institutional care will continue to be a critical part of the State's long-term care options and that such services should promote individual dignity, autonomy, and a home-like environment.

"§ 143B-181.6. Screening program for elderly. Purpose and intent.

The Secretary of Human Resources shall develop a comprehensive screening program for elderly people in need of care, to be administered at the local level, focused on providing elderly persons with the least restrictive level of care that meets the medical and social needs of the person. This program shall provide for expansion of the preadmission screening of applicants and recipients in need of long-term care, setting priorities according to immediate need. The process should be made more efficient in identifying those people in need of care who could remain at home if provided the precise program of in-home care each individual requires. Private paying patients may take advantage of the screening services and services necessary to remain in their homes by paying fees for these services, pursuant to G.S. 108A-10 or G.S. 130-17(e) as appropriate. The screening shall be carried out by a team of at least two people, a social worker and a registered nurse familiar with care of the elderly, each of whom must be experienced in evaluation and provision of in-home services. The process shall include a visit to the home by at least one member of the screening team. The team in consultation with a physician licensed to practice medicine in North Carolina shall determine if in-home care, whether health, social or both would enable the person to stay at home or in the community. The team shall plan precisely what program of care and support services are available through both public or private agencies. Provision must be made for such care in conformity with established quality assurance procedures for the care so rendered, together with periodic reassessment. Nothing contained in the act shall require counties to participate in the comprehensive screening program. It is the North Carolina General Assembly's intent in the State's development and implementation of long-term care policies that:

- (1) Long-term care services administered by the Department of Human Resources and other State and local agencies shall include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;
- (2) Home and community-based services shall be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing manner and based on the desires of the elderly and their families;
- (3) All services shall be responsive and appropriate to individual need and shall be delivered through a seamless system that is flexible and responsive regardless of funding source;
- (4) Services shall be available to all elderly who need them but targeted primarily to the most frail, needy elderly;

- (5) State and local agencies shall maximize the use of limited resources by establishing a fee system for persons who have the ability to pay;
- (6) Institutional care shall be provided in such a manner and in such an environment as to promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and
- (7) State health planning for institutional bed supply shall take into account increased availability of other home and community-based services options.

~~"§ 143B-181.7. Development and implementation of rules.~~

~~The Department of Human Resources shall define by rule the population to be screened, establish a uniform screening and assessment schedule, and promulgate a uniform reporting form. Prior to action by the Department, the Secretary shall convene an implementation committee composed of local providers, representatives of State agencies and organizations with experience and information about in-home services and long-term care to assist in implementation and development of these rules.~~

~~"§ 143B-181.8. Utilization of Medicaid funds.~~

~~The Secretary of the Department of Human Resources may utilize Medicaid funds to the extent provided for by federal law and regulation for home health and personal care and seek such waivers as may be necessary to implement this act including Medicaid eligibility criteria supporting the provision of in-home care.~~

~~"§ 143B-181.9. Reporting.~~

~~The Department shall report to the Legislative Research Commission on the implementation of this act, including the eligibility requirements, screening processes, and financial barriers to implementation. Such report shall be made no later than January 1, 1982, but the Legislative Research Commission may require interim progress reports from the Department."~~

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 555

CHAPTER 584

AN ACT TO INCREASE THE MAXIMUM FEES THAT THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS MAY ASSESS, TO MOVE FEE AUTHORIZATIONS FROM SEPARATE SECTIONS TO A GENERAL FEE SECTION, TO ELIMINATE A FEE THAT IS NOT NEEDED, AND TO UPDATE STATUTORY LANGUAGE ON BOARD ANNUAL MEETINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-39 reads as rewritten:

"§ 90-39. Fees.

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board

of Dental Examiners, it is authorized to charge and collect fees established by its rules and regulations not exceeding the following:

- | | | | |
|------|---|---------------------|-----------------|
| (1) | Each application for general dentistry examination..... | \$200.00 | <u>\$500.00</u> |
| (2) | Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the board of each such dentist..... | 75.00 | <u>140.00</u> |
| (2a) | Penalty for late renewal of any license or permit..... | | <u>50.00</u> |
| (3) | Each provisional license..... | 75.00 | <u>150.00</u> |
| (4) | Each intern permit or renewal thereof..... | 75.00 | <u>150.00</u> |
| (5) | Each certificate of license to a resident dentist desiring to change to another state or territory..... | 25.00 | <u>30.00</u> |
| (6) | Each license issued to a practitioner of another state or territory to practice in this State..... | 125.00 | <u>125.00</u> |
| (7) | Each license to resume the practice issued to a dentist who has retired from and returned to this State..... | 125.00 | <u>300.00</u> |
| (8) | Each instructor's license or renewal thereof..... | 75.00 | <u>140.00</u> |
| (9) | With each renewal of a dentistry license, an annual fee to help fund special peer review organizations for impaired dentists..... | | <u>50.00</u> |
| (10) | Each duplicate of any license, permit, or certificate issued by the Board..... | | <u>25.00</u> |
| (11) | Each office inspection for general anesthesia and parenteral sedation permits..... | | <u>350.00</u> |
| (12) | Each general anesthesia and parenteral sedation permit application or renewal of permit..... | | <u>50.00."</u> |

Sec. 2. G.S. 90-30.1 reads as rewritten:

"§ 90-30.1. *Standards for general anesthesia and parenteral sedation; fees authorized.*

The North Carolina Board of Dental Examiners may establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of general anesthesia and parenteral sedation for outpatients in the dental setting. Regulatory standards may include a permit process for general anesthesia and parenteral sedation by dentists. The requirements of any permit process adopted under the authority of this section must include provisions that will allow a dentist to qualify for continued use of general anesthesia, if he or she is licensed to practice dentistry in North Carolina and shows the Board that he or she has been utilizing general anesthesia in a competent manner for the five years preceding July 1, 1988, and his or her office facilities pass an on-site examination and inspection by qualified representatives of the Board. In order to provide the means of regulating general anesthesia and parenteral

sedation, including examination and inspection of dental offices involved, the Board may charge and collect fees established by its rules ~~and regulations not exceeding fifty dollars (\$50.00) for each permit application and application, each annual permit renewal, and not exceeding three hundred fifty dollars (\$350.00) for each office inspection.~~ inspection in an amount not to exceed the maximum fee amounts set forth in G.S. 90-39."

Sec. 3. G.S. 90-31 reads as rewritten:

"§ 90-31. Annual renewal of licenses.

The laws of North Carolina now in force, having provided for the annual renewal of any license issued by the North Carolina State Board of Dental Examiners, it is hereby declared to be the policy of this State, that all licenses heretofore issued by the North Carolina State Board of Dental Examiners or hereafter issued by said Board are subject to annual renewal and the exercise of any privilege granted by any license heretofore issued or hereafter issued by the North Carolina State Board of Dental Examiners is subject to the issuance on or before the first day of January of each year of a certificate of renewal of license.

On or before the first day of January of each year, each dentist engaged in the practice of dentistry in North Carolina shall make application to the North Carolina State Board of Dental Examiners and receive from said Board, subject to the further provisions of this section and of this Article, a certificate of renewal of said license.

The application shall show the serial number of the applicant's license, his full name, address and the county in which he has practiced during the preceding year, the date of the original issuance of license to said applicant and such other information as the said Board from time to time may prescribe, at least six months prior to January 1 of any year.

If the application for such renewal certificate, accompanied by the fee required by this Article, is not received by the Board before January 31 of each year, an additional fee ~~of ten dollars (\$10.00)~~ shall be charged for renewal certificate. The maximum penalty fee for late renewal is set forth in G.S. 90-39. If such application, accompanied by the renewal fee, plus the additional fee, is not received by the Board before March 31 of each year, every person, thereafter continuing to practice dentistry without having applied for a certificate of renewal shall be guilty of the unauthorized practice of dentistry and shall be subject to the penalties prescribed by G.S. 90-40."

Sec. 4. G.S. 90-35 reads as rewritten:

"§ 90-35. Duplicate licenses.

When a person is a holder of a license to practice dentistry in North Carolina or the holder of a certificate of renewal of license, he may make application to the North Carolina State Board of Dental Examiners for the issuance of a copy or a duplicate thereof accompanied by a fee ~~of five dollars (\$5.00)~~ that shall not exceed the maximum fee for a duplicate license or certificate set forth in G.S. 90-39. Upon the filing of the application and the payment of the fee, the said Board shall issue a copy or duplicate."

Sec. 5. G.S. 90-26 reads as rewritten:

"§ 90-26. Annual and special meetings.

The North Carolina State Board of Dental Examiners shall meet annually ~~on the fourth Monday in June of each year at such~~ the date and at the time and place as may be determined by the Board, and at such other ~~times~~ dates, times, and places as may be determined by action of the Board or by any majority of the members thereof. Notice of the date, time, and place of the annual meeting and of the ~~time,~~ date, time, and place of any special or called meeting shall be given in writing, by registered or certified mail or personally, to each member of the Board at least 10 days prior to said meeting; provided the requirements of notice may be waived by any member of the Board. At the annual meeting or at any special or called meeting, the said Board shall have the power to conduct examination of applicants and to transact such other business as may come before it, provided that in case of a special meeting, the purpose for which said meeting is called shall be stated in the notice."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 687

CHAPTER 585

AN ACT TO PROVIDE FOR IMPROVEMENT PERMITS FOR A WASTEWATER SYSTEM THAT ARE VALID FOR FIVE YEARS IN ADDITION TO THE IMPROVEMENT PERMITS THAT ARE VALID WITHOUT EXPIRATION UNDER CURRENT LAW.

The General Assembly of North Carolina enacts:

Section 1. G. S. 130A-334 reads as rewritten:

"§ 130A-334. *Definitions.*

The following definitions shall apply throughout this Article:

- (1) 'Construction' means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.
- (2) Repealed by Session Laws 1985, c. 462, s. 18.
- (2a) 'Industrial process wastewater' means any water-carried waste resulting from any process of industry, manufacture, trade, or business.
- (3) 'Location' means the initial placement for occupancy of a residence, place of business or place of public assembly.
- (3a) 'Maintenance' means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing wastewater system.
- (4), (5) Repealed by Session Laws 1985, c. 462, s. 18.
- (6) 'Place of business' means a store, warehouse, manufacturing establishment, place of amusement or recreation, service station, office building or any other place where people work.
- (7) 'Place of public assembly' means a fairground, auditorium, stadium, church, campground, theater or any other place where people assemble.

- (7a) 'Pretreatment' means any biological, chemical, or physical process or system for improving wastewater quality and reducing wastewater constituents prior to final treatment and disposal in a subsurface wastewater system and includes, but is not limited to aeration, clarification, digestion, disinfection, filtration, separation, and settling.
- (7b) 'Plat' means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.
- (8) 'Public or community wastewater system' means a single system of wastewater collection, treatment and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality or a public utility.
- (9) 'Relocation' means the displacement of a residence or place of business from one site to another.
- (9a) 'Repair' means the extension, alteration, replacement, or relocation of existing components of a wastewater system.
- (10) 'Residence' means a private home, dwelling unit in a multiple family structure, hotel, motel, summer camp, labor work camp, manufactured home, institution or any other place where people reside.
- (11) Repealed by Session Laws 1992, c. 944, s. 3.
- (12) 'Septic tank system' means a subsurface wastewater system consisting of a settling tank and a subsurface disposal field.
- (13) 'Sewage' means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (13a) 'Site plan' means a drawing that shows the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters.
- (14) 'Wastewater' means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.
- (15) 'Wastewater system' means a system of wastewater collection, treatment, and disposal in single or multiple components, including a privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste."

Sec. 2. G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal

according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. ~~The permits~~ Permits other than improvement permits shall be valid for a period prescribed by the rules, except that improvement rule. Improvement permits shall be valid without expiration upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. A statement shall be displayed prominently on both the application form for the permit and the permit that states that the permit is subject to revocation if site plans or the intended use change."

Sec. 3. G.S. 130A-336(a) reads as rewritten:

"(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. An improvement permit shall be issued in compliance with the rules adopted pursuant to this ~~Article~~ Article. An improvement permit shall include: a description of the facility the proposed site is to serve; the proposed wastewater system; the design wastewater flow and characteristics; a plat of the property showing the specific location of the facility, the site for the proposed wastewater system, property lines, water supplies, surface waters; the conditions for any site modifications; and any other information required by the rules of the Commission.

- (1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.
- (2) A description of the facility the proposed site is to serve.
- (3) The proposed wastewater system.
- (4) The design wastewater flow and characteristics.
- (5) The conditions for any site modifications.
- (6) Any other information required by the rules of the Commission.

The improvement permit shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the

local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale."

Sec. 4. This act is effective upon ratification and applies to all applications filed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1075

CHAPTER 586

AN ACT TO REMOVE THE EXPIRATION DATE ON THE
ENDORSEMENT TO SELL PROGRAM SET FORTH IN CHAPTER
515 OF THE 1993 SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 515 of the 1993 Session Laws reads as rewritten:

"Sec. 8. G.S. 113-154.1(i), as enacted by Section 3 of this act, becomes effective December 1, 1993, and applies to violations committed on or after that date. The remainder of this act is effective upon ratification. The fees for endorsement to sell apply to endorsement issued on or after that date. ~~This act expires July 1, 1996.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1233

CHAPTER 587

AN ACT TO ENACT THE OVERHEAD HIGH-VOLTAGE LINE
SAFETY ACT AS RECOMMENDED BY THE JOINT LEGISLATIVE
UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section I. Chapter 95 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 19A.

"Overhead High-Voltage Line Safety Act.

"§ 95-229.5. Purpose; scope.

The purpose of this Article is to promote the safety and protection of persons engaged in work in the vicinity of high-voltage overhead lines. This Article defines the conditions under which work may be carried on safely and provides for the precautionary safety arrangements to be taken when any person engages in work in proximity to overhead high-voltage lines.

"§ 95-229.6. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Covered equipment' or 'covered items' means any mechanical equipment, hoisting equipment, antenna, or rigging; any part of which is capable of vertical, lateral, or swinging motion that could cause any portion of the equipment or item to come closer than 10

feet to a high-voltage line during erection, construction, operation, or maintenance; including, but not limited to, equipment such as cranes, derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay-loaders, haystackers, combines, irrigation equipment, portable grain augers or elevators, and mechanical cotton pickers. These terms also include items such as handheld tools, ladders, scaffolds, antennas, and outriggers, houses or other structures in transport, and gutters, siding, and other construction materials, the motion or manipulation of which could cause them to come closer than 10 feet to a high-voltage line.

- (2) 'High-voltage line' means all aboveground electrical conductors of voltage in excess of 600 volts measured between conductor and ground.
- (3) 'Person' means natural person, firm, business association, company, partnership, corporation, or other legal entity.
- (4) 'Person responsible for the work to be done' means the person performing or controlling the job that necessitates the precautionary safety measures required by this Article.
- (5) 'Warning sign' means a weather-resistant sign of not less than five inches by seven inches with at least two panels: a signal panel and a message panel. The signal panel shall contain the signal word 'WARNING' in black lettering and a safety alert symbol consisting of a black triangle with an orange exclamation point, all on an orange background. The message panel shall contain the following words, either in black letters on a white background or white letters on a black background: 'UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH-VOLTAGE LINES -- Contact with power lines can result in death or serious burns.' A symbol or pictorial panel may also be added. Such warning sign language, lettering, style, colors, size, and format shall meet the requirements of the American National Standard ANSI Z535.4-1991, Product Safety Signs and Labels, or its successor or such equally effective standard as may be approved for use by the Commissioner of Labor. In the event of a conflict with regard to the appearance or content of the warning sign, the standard approved by the Commissioner of Labor shall take precedence over any description or standard set out in this subdivision.

"§ 95-229.7. Prohibited activities.

(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

- (1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:
 - a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee,

or other person to be brought within six feet of any overhead high-voltage line, or

- b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.

- (2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:

- a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,

- b. Refuse collection equipment is operating, or

- c. Agricultural equipment is operating.

- (3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.

- (4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.

- (5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead utility lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.

- (6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines.

(b) If the high-voltage line has been insulated or de-energized and grounded, in accordance with G.S. 95-229.10, the required clearances specified in subdivisions (1), (2), and (4) of subsection (a) of this section may be reduced to not less than two feet. Under no circumstances shall the line or its covering be contacted. If the line is temporarily raised or moved to accommodate the expected work, without also being insulated or de-

energized and grounded, the required clearances from the line, specified in subsection (a) of this section, shall not be reduced.

"§ 95-229.8. Warning signs.

(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

- (1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and
- (2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld tools and handheld equipment which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5).

(b) If the Commissioner of Labor determines that a successor, substitute, or additional sign standard may or shall be used in place of the requirements listed in G.S. 95-229.6, a period of not less than 18 months from such determination shall be allowed for any required replacement of signs.

"§ 95-229.9. Notification.

(a) When any person desires to carry on any work in closer proximity to any high-voltage line than permitted by G.S. 95-229.7(a), the person responsible for the work to be done shall notify the owner or operator of the high-voltage line prior to the time the work is to be commenced. Such notification shall occur at the earliest practical time; however, such notification shall occur not less than 48 hours, excluding Saturday, Sunday, and legal State and federal holidays, prior to the intended work. In emergency situations, including police, fire, and rescue emergencies, such notification shall occur as soon as possible under the circumstances. In cases where the person or business entity responsible for doing the work is doing so under contract or agreement with a government entity, and the government entity and the owner or operator of the lines have already made satisfactory mutual arrangements, further arrangements for that particular work are not required.

(b) Every notice served by any person on an owner or operator of a high-voltage line shall contain the following information:

- (1) The name, address, and telephone number of the individual serving such notice;
- (2) The location of the proposed work;
- (3) The name, address, and telephone number of the person responsible for the work;
- (4) The field telephone number of the site of such work, if one is available;
- (5) The type, duration, and extent of the proposed work;
- (6) The name of the person for whom the proposed work is being performed;
- (7) The time and date of the notice; and
- (8) The approximate date and time when the work is to begin.

(c) If the notification required by this Article is made by telephone, a record of the information in subsection (b) of this section shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this Article.

(d) Owners or operators of high-voltage lines may form and operate an association providing for mutual receipt of notification of activities close to high-voltage lines in a specified area. In areas where an association is formed, the following shall occur:

- (1) Notification to the association shall be effected as set forth in this section.
- (2) Owners or operators of high-voltage lines in the area:
 - a. May become members of the association;
 - b. May participate in and receive the services furnished by the association; and
 - c. Shall pay their proportionate share of the cost for the services furnished.
- (3) The association whose members or participants have high-voltage lines within a county shall file a list containing the name, address, and telephone number of every member and participating owner or operator of high-voltage lines with the clerk of superior court.
- (4) If notification is made by telephone, an adequate record of the information required by subsection (b) of this section shall be maintained by the association to document compliance with the requirements of this Article.

"§ 95-229.10. Precautionary safety arrangements.

(a) Installation or performance of precautionary safety arrangements shall be performed by the owner or operator of high-voltage lines only after mutually satisfactory arrangements have been negotiated between the owner or the operator of the lines, or both, and the person responsible for the work to be done. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with high-voltage lines as far as is reasonable and cost-effective. The person responsible for the work may perform the work only after satisfactory mutual arrangements, including coordination of work and construction schedules, have been made between the owner or operator of the high-voltage lines and the person responsible for the work. The owners or operators of high-voltage lines shall make the final determination as to which arrangements are most feasible and appropriate under the circumstances; provided, however, that the utility may determine that no arrangements can be made that would allow the proposed work to be carried out in a reasonably safe manner or at reasonable cost taking into account the cost to its customers, and the owner or operator of high-voltage lines may refuse to enter into an agreement on that basis.

(b) The precautionary safety measures shall be appropriate, reasonable, and cost-effective for the work of which the owner or operator of high-voltage lines has received notification. During mutual negotiations, the person responsible for the work may change the notification of intended work to include different or limited work so as to reduce the precautionary

safety measures required to accommodate such work. The precautionary safety measures shall not violate the requirements of the current edition of the National Electrical Safety Code.

(c) The owner or operator of the high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made; except that, if the amount of payment is in dispute, the owner or operator shall commence with providing precautionary safety measures as if agreement had then been reached and the undisputed amount shall be paid according to the agreement reached as to that amount. If agreement for payment of the disputed amount has not been reached within 14 days from completion of precautionary safety measures, the owner or operator and the person or business entity responsible for doing the work may resolve the dispute by arbitration or other legal means.

(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the agreement for payment has been reached as required in subsection (c) of this section, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon in a timely manner, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like.

(e) Precautionary safety arrangements may include:

- (1) Placement of temporary mechanical barriers separating and preventing contact between material, equipment, other objects, or persons and high-voltage lines;
- (2) Temporary de-energization and grounding;
- (3) Temporary relocation or raising of the high-voltage lines; or
- (4) Other such measures found to be appropriate in the judgment of the owner or operator of the high-voltage lines.

(f) The actual expense incurred by any owner or operator of high-voltage lines in taking precautionary measures as set out in subsections (a) through (e) of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work to be done, except if:

- (1) Any owner or operator of an overhead high-voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county, or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high-voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility. However, if it is determined by the Department of Transportation or a city, county, or town that the temporary safety arrangements are for the sole convenience of its

- contractor, the actual expense shall be the responsibility of the contractor;
- (2) The owner or operator of the high-voltage lines has not installed the line in conformance with an applicable edition of the National Electrical Safety Code. In that case, the liability of the person responsible for the work shall be limited to the amount required to accommodate the work over and above the amount required to bring the installation into compliance with the National Electrical Safety Code; or
- (3) In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of one thousand dollars (\$1,000).

"§ 95-229.11. Exemptions.

(a) This Article shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of the following systems, provided that such work on any of the following systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the systems to perform the work, and the owner of the system has a valid joint-use contract or agreement with the owner of the high-voltage lines:

- (1) Rail transportation systems;
(2) Electrical generating, transmission, or distribution systems;
(3) Communications systems, including cable television; or
(4) Any other publicly or privately owned system, including traffic signals.

(b) This Article also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801, et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration.

"§ 95-229.12. Application.

Nothing in this Article shall relieve any person from complying with any safety rule, regulation, or statute not imposed by this Article. A violation of this Article shall not constitute negligence or contributory negligence, nor give rise to any cause of action based upon injury to persons or property. An action may be brought by an owner or operator of a high-voltage line to recover the cost of precautionary safety arrangements or for damage to its facilities. Nothing contained in this Article shall be construed to alter, amend, restrict, or limit the liability of any person for violation of that person's duty under law; nor shall any person be relieved from liability as a result of violations of standards under existing law where such violations of existing standards of care are found to be a cause of damage to property, personal injury, or death.

"§ 95-229.13. Severability.

The provisions of this Article are severable. If any part of this Article is declared invalid or unconstitutional, such declaration shall not affect the remainder."

Sec. 2. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1487

CHAPTER 588

AN ACT TO PROVIDE THAT MARRIAGES RECOGNIZED OUTSIDE OF THIS STATE BETWEEN PERSONS OF THE SAME GENDER ARE NOT VALID.

The General Assembly of North Carolina enacts:

Section 1. Chapter 51 of the General Statutes is amended by adding the following new section to read:

"§ 51-1.2. Marriages between persons of the same gender not valid.

Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 233

CHAPTER 589

AN ACT TO TRANSFER MOORE COUNTY TO JUDICIAL AND PROSECUTORIAL DISTRICTS 19B.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 7A-41(a) reads as rewritten:

"(a) The counties of the State are organized into judicial divisions and superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
	3A	Pitt	2
	3B	Carteret, Craven, Pamlico	2
	4A	Duplin, Jones,	1

		Sampson	
	4B	Onslow	1
	5	New Hanover, Pender	3
	6A	Halifax	1
	6B	Bertie, Hertford, Northampton	1
	7A	Nash	1
	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
	8A	Lenoir and Greene	1
	8B	Wayne	1
Second	9	Franklin, Granville, Vance, Warren	2
	9A	Person, Caswell	1
	10A	(part of Wake, see subsection (b))	2
	10B	(part of Wake, see subsection (b))	2
	10C	(part of Wake, see subsection (b))	1
	10D	(part of Wake, see subsection (b))	1
	11A	Harnett, Lee	1
	11B	Johnston	1
	12A	(part of Cumberland, see subsection (b))	1
	12B	(part of Cumberland, see subsection (b))	1
	12C	(part of Cumberland, see subsection (b))	2
	13	Bladen, Brunswick, Columbus	2
	14A	(part of Durham, see subsection (b))	1
	14B	(part of Durham, see subsection (b))	3
	15A	Alamance	2
	15B	Orange, Chatham	1
	16A	Scotland, Hoke	1
	16B	Robeson	2
Third	17A	Rockingham	2
	17B	Stokes, Surry	2
	18A	(part of Guilford,	1

	see subsection (b))	
18B	(part of Guilford, see subsection (b))	1
18C	(part of Guilford, see subsection (b))	1
18D	(part of Guilford, see subsection (b))	1
18E	(part of Guilford, see subsection (b))	1
19A	Cabarrus	1
19B	Montgomery, <u>Moore</u> , Randolph	1 <u>2</u>
19C	Rowan	1
20A	Anson, Moore , Richmond	2 <u>1</u>
20B	Stanly, Union	2
21A	(part of Forsyth, see subsection (b))	1
21B	(part of Forsyth, see subsection (b))	1
21C	(part of Forsyth, see subsection (b))	1
21D	(part of Forsyth, see subsection (b))	1
22	Alexander, Davidson, Davie, Iredell	2
23	Alleghany, Ashe, Wilkes, Yadkin	1
Fourth 24	Avery, Madison, Mitchell, Watauga, Yancey	1
25A	Burke, Caldwell	2
25B	Catawba	2
26A	(part of Mecklenburg, see subsection (b))	2
26B	(part of Mecklenburg, see subsection (b))	2
26C	(part of Mecklenburg, see subsection (b))	2
27A	Gaston	2
27B	Cleveland, Lincoln	2
28	Buncombe	2
29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
30A	Cherokee, Clay, Graham, Macon, Swain	1

30B

Haywood, Jackson

1"

(b) The superior court judgeship held on June 12, 1996, in Superior Court District 20A by a resident of Moore County (James M. Webb) is allocated to Superior Court District 19B. The term of that judge expires December 31, 2000. The judge's successor shall be elected in the 2000 general election.

(b1) The superior court judgeship held on June 12, 1996, in Superior Court District 20A by a resident of Anson County (Donald R. Huffman) is allocated to Superior Court District 20A. The term of that judge expires December 31, 2000. The judge's successor shall be elected in the 2000 general election.

(c) G.S. 7A-41(d)(39) reads as rewritten:

"(39) In the nineteenth-B superior court district, Russell G. Walker, Jr., serves a term expiring December 31, 1990. No election shall be held in 1998 for the full term of the seat now occupied by Russell G. Walker, Jr., and the holder of that seat shall serve until a successor is elected in 2000 and qualifies. The succeeding term shall begin January 1, 2001."

Sec. 2. (a) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District Judges		County
1	4	Camden
		Chowan
		Currituck
		Dare
		Gates
2	3	Pasquotank
		Perquimans
		Martin
		Beaufort
		Tyrrell
3A	4	Hyde
		Washington
3B	4	Pitt
		Craven
		Pamlico
4	6	Carteret
		Sampson
		Duplin
		Jones
5	6	Onslow
		New Hanover
		Pender
6A	2	Halifax
6B	3	Northampton

		Bertie
		Hertford
7	6	Nash
		Edgecombe
		Wilson
8	6	Wayne
		Greene
		Lenoir
9	4	Granville
		(part of Vance
		see subsection (b))
		Franklin
9A	2	Person
		Caswell
9B	1	Warren
		(part of Vance
		see subsection (b))
10	12	Wake
11	6	Harnett
		Johnston
		Lee
12	7	Cumberland
13	4	Bladen
		Brunswick
		Columbus
14	5	Durham
15A	3	Alamance
15B	3	Orange
		Chatham
16A	2	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	3	Stokes
		Surry
18	11	Guilford
19A	3	Cabarrus
19B	3 5	Montgomery
		Moore
		Randolph
19C	3	Rowan
20	7 6	Stanly
		Union
		Anson
		Richmond
		Moore
21	7	Forsyth
22	7	Alexander
		Davidson

		Davie
		Iredell
23	3	Alleghany
		Ashe
		Wilkes
		Yadkin
24	3	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	7	Burke
		Caldwell
		Catawba
26	14	Mecklenburg
27A	5	Gaston
27B	4	Cleveland
		Lincoln
28	5	Buncombe
29	5	Henderson
		McDowell
		Polk
		Rutherford
		Transylvania
30	4	Cherokee
		Clay
		Graham
		Haywood
		Jackson
		Macon
		Swain."

(b) Each district court judgeship held on June 12, 1996, in District Court District 20 by a resident of Moore County (Michael Earle Beale and Jayrene Russell Maness) is allocated to District Court District 19B. The term of each of these judges expires December 7, 1998. A successor to each judge shall be elected in the 1998 general election.

(c) Each district court judgeship held on June 12, 1996, in District Court District 20 by a resident of Anson, Richmond, Stanly, or Union County (Ronald W. Burris, Tanya Wallace, Christopher W. Bragg, Susan C. Taylor, and Joseph J. Williams) is allocated to District Court District 20. The terms of Judges Burris, Wallace, Bragg, and Williams expire December 2, 1996. A successor to each judge shall be elected in the 1996 general election. The term of Judge Taylor expires December 7, 1998. A successor shall be elected in the 1998 general election.

(d) The effect of subsections (a) through (c) of this section is also to add an additional district court judgeship in District Court District 20 effective January 1, 1997. The Governor shall appoint a person to fill the vacancy for the remainder of the term expiring the first Monday in December of 2000."

Sec. 3. (a) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	8
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4
3A	Pitt	7
3B	Carteret, Craven, Pamlico	6
4	Duplin, Jones, Onslow, Sampson	10
5	New Hanover, Pender	9
6A	Halifax	3
6B	Bertie, Hertford, Northampton	3
7	Edgecombe, Nash, Wilson	10
8	Greene, Lenoir, Wayne	8
9	Franklin, Granville, Vance, Warren	8
9A	Person, Caswell	2
10	Wake	20
11	Harnett, Johnston, Lee	10
12	Cumberland	12
13	Bladen, Brunswick, Columbus	6
14	Durham	9
15A	Alamance	6
15B	Orange, Chatham	5
16A	Scotland, Hoke	3
16B	Robeson	7
17A	Rockingham	4
17B	Stokes, Surry	4
18	Guilford	18
19A	Cabarrus	4
19B	Montgomery, <u>Moore</u> , Randolph	5 9
19C	Rowan	4
20	Anson, Moore , Richmond, Stanly, Union	12
21	Forsyth	12
22	Alexander, Davidson, Davie, Iredell	11
23	Alleghany, Ashe, Wilkes, Yadkin	4
24	Avery, Madison, Mitchell, Watauga, Yancey	3

25	Burke, Caldwell, Catawba	11
26	Mecklenburg	24
27A	Gaston	8
27B	Cleveland, Lincoln	5
28	Buncombe	8
29	Henderson, McDowell, Polk, Rutherford, Transylvania	8
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	6

(b) This section adds four additional assistant district attorneys in prosecutorial District 19B which shall be filled by the district attorney of that district. The General Assembly shall evaluate prior to July 1, 1998, whether the authorized number of assistant district attorneys for District 20 should remain based on case load at 11 or some lower number not less than 9.

Sec. 4. Notwithstanding G.S. 7A-44.1, if any judge who on June 12, 1996, was a senior resident superior court judge ceases to be the senior resident superior court judge for a superior court district as a result of the transfer of a county from one superior court district to another, that judge may nevertheless appoint a judicial secretary to serve that judge's clerical and secretarial needs during that judge's continuation in office, at that judge's pleasure and under that judge's direction.

Sec. 5. (a) Sections 1, 3, and 4 of this act become effective January 4, 1997, or the date upon which those sections are approved under section 5 of the Voting Rights Act of 1965, whichever is later. Section 2 of this act becomes effective January 1, 1997, or the date upon which those sections are approved under section 5 of the Voting Rights Act of 1965, whichever is later. This section is effective upon ratification.

(b) The Superior Court election in Superior Court District 20A in the November 1996 general election for the seat of the superior court judge now residing in Anson County is not affected by this act and is conducted as previously provided by law.

(c) Effective on the occurrence of the first vacant assistant district attorney position in Prosecutorial District 20 after January 1, 1997, the number of assistant district attorneys in that district in G.S. 7A-60(a1) is amended by deleting "12" and substituting "11".

(d) Effective on the occurrence of the first vacant assistant district attorney position in Prosecutorial District 19B after January 1, 1997, the number of assistant district attorneys in that district in G.S. 7A-60(a1) is amended by deleting "9" and substituting "8". The Administrative Office of the Courts shall notify the Revisor of Statutes as those vacancies occur.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 540

CHAPTER 590

AN ACT TO AUTHORIZE THE ISSUANCE OF NINE HUNDRED FIFTY MILLION DOLLARS GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, FOR THE CONSTRUCTION OF HIGHWAYS AND TO AMEND THE HIGHWAY TRUST FUND.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known and may be cited as the "State Highway Bond Act of 1996".

Sec. 2. Purpose and findings and determinations. (a) Purpose. -- It is the intent and purpose of the General Assembly by this act to provide, subject to a vote of the qualified voters of the State, for the issuance of nine hundred fifty million dollars (\$950,000,000) general obligation bonds of the State for the purpose of providing funds, with any other available funds, for constructing, improving, and relocating roads, bridges, tunnels, and other highway facilities constituting at the time of the construction, improvement, and relocation, urban loops, highways in the Intrastate System, or a part of the State secondary highway system, as referenced or defined in this act.

(b) Findings and determinations. -- The General Assembly finds that:

- (1) Pursuant to Chapter 692 of the 1989 Session Laws, the General Assembly created the Highway Trust Fund, provided for revenues to be deposited to the Highway Trust Fund, and designated how the revenues may be expended.
- (2) As contemplated by Chapter 692, highway construction to be funded from the Highway Trust Fund is funded on a "pay-as-you-go" basis, with highway construction proceeding based upon the amount of funds to be available to pay the costs of the construction on a current basis, and this highway construction is expected to be completed and funded by December 31, 2013.
- (3) Providing funds from the proceeds of bonds as authorized in this act will expedite the completion of construction of urban loops, Intrastate System highways, and necessary improvements to the State secondary road highway system that otherwise would be constructed only when sufficient revenues were generated to fund this construction.
- (4) The State could issue the bonds authorized by this act, expediting this construction, and could provide sufficient funds to pay debt service on the bonds from the moneys otherwise to be deposited to the Highway Trust Fund to fund highway construction.
- (5) Sufficient moneys are expected to be deposited to the Highway Trust Fund to pay anticipated debt service on the bonds authorized by this act.
- (6) Although the bonds authorized by this act will constitute general obligation bonds, secured by the faith and credit and taxing power of the State, and although the funds deposited to the Highway Trust Fund are not specifically pledged to pay debt service on the bonds, it is the intent of the General Assembly that the debt

service on the bonds authorized by this act will be provided from amounts deposited to the Highway Trust Fund, and certain amendments to Chapter 692 of the 1989 Session Laws are necessary to facilitate this funding of payments.

Sec. 3. Definitions. As used in this act, unless the context otherwise requires:

- (1) "Bonds" means bonds authorized to be issued under this act.
- (2) "Cost" means the capital cost of providing any highway facilities under this act, including, but not limited to, the following:
 - a. The cost of doing any or all of the following:
 1. Acquire, construct, erect, provide, develop, install, furnish, and equip.
 2. Reconstruct, remodel, alter, renovate, replace, refurnish, and reequip.
 3. Enlarge, expand, and extend.
 4. Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.
 - b. The cost of all property, both real and personal and both improved and unimproved, appurtenances, structures, facilities, machinery, equipment, easements, rights, rights-of-way, franchises, and licenses used or useful in connection with the purpose authorized.
 - c. The cost of demolishing or moving structures from land acquired and acquiring any lands to which the structures are to be moved.
 - d. The cost of plans, specifications, studies and reports, surveys, and estimates of costs and revenues.
 - e. The cost of engineering, architectural, and other consulting services as may be required.
 - f. Administrative expenses and charges directly related to bond-financed projects.
 - g. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.
 - h. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities and interest rate swap agreements, and financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer.
 - i. The cost of reimbursing the State for any payments made for any cost described above.
 - j. Any other costs and expenses necessary or incidental to the purposes of this act. The allocations may be increased to reflect the availability of other funds, including, but not limited to, income earned on the investment of bond and note proceeds and the proceeds of any grants.

Allocations made pursuant to this act of proceeds of bonds to the costs of highway facilities in each case may include allocations to

pay the costs set forth in subparagraphs f., g., i., and j. of this subdivision in connection with the issuance of bonds for the facilities.

- (3) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution; an insurance company, reinsurance company, surety company, or other insurance institution; a corporation, investment banking firm, or other investment institution; or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.
- (4) "Department of Transportation" means the Department of Transportation established by Article 8 of Chapter 143B of the General Statutes, and any successor of that Department.
- (5) "Highway facilities" means the State highway facilities authorized to be funded, with any other available funds, with the proceeds of bonds or notes.
- (6) "Intrastate System" has the same meaning as in G.S. 136-175.
- (7) "Notes" means notes authorized to be issued under this act.
- (8) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any bonds or notes, including any of the following:
 - a. A provision providing for adjustment so that the purchase price of the bonds or notes in the open market would be as close to par as possible.
 - b. A provision providing for adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.
 - c. Any other provision that the State Treasurer may determine to be consistent with this act and to not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.
- (9) "State secondary highway system" includes all of the State highway system located outside municipal corporate limits which are not designated by N.C., U.S., or Interstate numbers.
- (10) "Urban loops" means the urban loops set out in G.S. 136-180, including any changes as may be made from time to time by the General Assembly.
- (11) "State" means the State of North Carolina.

Sec. 4. Authorization of bonds and notes. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Highway Bonds in the election called and held as provided in this act, the State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Highway Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding nine hundred fifty million dollars (\$950,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Sec. 5. Appropriation and use of bond and note proceeds. (a) The proceeds of the bonds and notes are appropriated to the Department of Transportation. This appropriation is in addition to any other appropriation to that Department.

(b) The proceeds of five hundred million dollars (\$500,000,000) of the bonds and notes shall be used by the Department of Transportation for the purpose of paying, with any other available funds, part or all of the costs of all or some of the urban loops as shall be determined from time to time by the Department of Transportation.

(c) The proceeds of three hundred million dollars (\$300,000,000) of the bonds and notes shall be used by the Department of Transportation for the purpose of paying, with any other available funds, part or all of the costs of all or some of the highways in the Intrastate System as shall be determined from time to time by the Department of Transportation.

(d) The proceeds of one hundred fifty million dollars (\$150,000,000) of the bonds and notes shall be used by the Department of Transportation for the purpose of paying, with any other available funds, part or all of the costs of projects constituting a part of the State secondary highway system. The Department of Transportation shall use these funds for projects that result in the paving of unpaved roads. Each county shall receive a percentage of these funds, the percentage to be determined as a factor of the number of miles of unpaved State-maintained secondary roads in the county divided by the total number of miles of unpaved State-maintained secondary roads in the State. The particular projects to constitute parts of the State secondary highway system and to be financed from the proceeds of the bonds and notes shall be determined from time to time by the Department of Transportation.

(e) The funds appropriated in this section are supplemental to the funds appropriated pursuant to G.S. 136-176(b) and may not be used, directly or indirectly, for any purpose other than the purposes provided in this section. It is the intent of the General Assembly that the allocations pursuant to G.S. 136-176(b) shall not be supplanted or diminished due to the appropriations of the proceeds of the bonds or notes pursuant to this section.

Sec. 6. Priority of Highway Trust Fund Use. G.S. 136-176(b) reads as rewritten:

"(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the

amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

- (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. ~~136-179~~, 136-179 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these projects.
- (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. ~~136-180~~, 136-80 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to these urban loops.
- (3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.
- (4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. ~~136-182~~, 136-182 and to pay debt service on highway bonds and notes that are issued under the State Highway Bond Act of 1996 and whose proceeds are applied to secondary road construction.

The Department must administer funds allocated under subdivisions (1), (2), and (4) of this subsection in a manner that ensures that sufficient funds are available to make the debt service payments on bonds issued under the State Highway Bond Act of 1996 as they become due."

Sec. 7. Highway Trust Fund effective date. The first paragraph of Section 8.4 of Chapter 692 of the 1989 Session Laws reads as rewritten:

"Sec. 8.4. When contracts for all projects specified in Article 14 of Chapter 136 of the General Statutes have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State. The proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for the projects specified in Article 14 of Chapter 136 of the General Statutes. The Except as otherwise provided in this section, the changes below shall become effective on the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between the date the letter is sent and the first day of the following quarter. In that circumstance, the changes shall become effective on the first day of the second calendar quarter following the date the Secretary sends the letter. The changes below shall not become effective, however, until the State Treasurer certifies by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, that all of the bonds and notes issued pursuant to the State Highway Bond Act of 1996 have been retired or provision for their retirement has been made."

Sec. 8. Allocation of bond and note proceeds. The proceeds of the bonds and notes, including any premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be deposited by the State Treasurer in a special fund to be established in the Department of the State Treasurer and to be designated the "Highway Facilities Bonds Fund", which may include any appropriate special accounts as may be determined by the State Treasurer.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in the financing of highway facilities may be placed by the State Treasurer in the Highway Facilities Bonds Fund, or in any separate funds or accounts as the State Treasurer may determine, and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Highway Facilities Bonds Fund or in any separate fund or account may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury except with respect to grant money to the extent otherwise directed by the terms of the grant, and any investment earnings shall be credited to the Highway Facilities Bonds Fund or the particular fund or account from which the investment was made.

All moneys deposited in, or accruing to, the credit of the Highway Facilities Bonds Fund, other than moneys set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to pay the cost of highway facilities authorized by this act.

The proceeds of the bonds and notes may be used with other money made available by the General Assembly for the purposes provided in this act, including the proceeds of any other State bond issues, which may be made available at the session of the General Assembly at which this act is ratified or at any subsequent sessions. The proceeds of the bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until a requisition has been approved by the Director of the Budget and which requisition shall be approved only after compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

Sec. 9. Election. The question of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at the general election in November 1996. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters for the election shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election which are in addition to those which would have otherwise been incurred, these expenses to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

☐ FOR ☐ AGAINST

The issuance of nine hundred fifty million dollars (\$950,000,000) State of North Carolina Highway Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, through the application of not in excess of five hundred million dollars (\$500,000,000) of the bonds to pay the capital costs of urban loops, the application of not in excess of three hundred million dollars (\$300,000,000) of the bonds to pay the capital costs of Intrastate System projects, and the application of not in excess of one hundred fifty million dollars (\$150,000,000) of the bonds to pay the capital costs of projects constituting a part of the State secondary highway system resulting in the paving of unpaved roads.

If a majority of those voting on the bond question vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act. If a majority of those voting on the bond question vote against the issuance of the bonds, the bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for the holding of elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Sec. 10. Issuance of bonds and notes. (a) Terms and conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not later than December 1, 2013, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; form and denomination; registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State

by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the bonds and notes, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of sale; expenses. Subject to approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; repayment. By and with the approval of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the borrowed money, but only in the following circumstances and under the following conditions:

- (1) For anticipating the sale of bonds the issuance of which the Council of State shall have approved, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
- (2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
- (3) For the renewal of any loan evidenced by notes;
- (4) For refunding bonds or notes; or

(5) For the purposes authorized in this act.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals of any notes, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding bonds and notes. By and with the approval of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds or notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as income.

(g) Investment eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes.

Sec. 11. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner of the bonds or notes provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings

providing for the issuance of the bonds or notes, including, but not limited to, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Sec. 12. Other agreements. The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit enhancement and liquidity facilities, and interest rate swap agreements, and any other related instruments and matters as the State Treasurer considers desirable in connection with the issuance of bonds or notes.

Sec. 13. Interpretation of act. (a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes or specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(d) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 14. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-180.1. Proposed Durham Northern loop.

The Department of Transportation shall notify the owners of all property that is within a corridor located in Durham County and is being considered as a possible alignment of the proposed Durham Northern loop of at least one informational workshop, if one is held, and any public hearings on that urban loop. These notifications shall be made by first-class mail and shall be made no less than 30 days prior to the scheduled workshop or public hearing. Prior to a decision on the proposed Durham Northern loop, the

Department of Transportation shall consider all alternatives advanced by interested parties including improvements to existing corridors and consider neighborhood growth, economic development patterns and trends, the best protection for the environment, and limitation on encroachment upon State parks. A public report shall be made by the Department of Transportation of its findings and the basis for its decision."

Sec. 15. Article 14 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-177.1. Requirement to use federal funds for Intrastate System projects and urban loops.

For fiscal years 1996-97 through 2010-11, the Department of Transportation must use ten million dollars (\$10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the Intrastate System projects described in G.S. 136-179. For fiscal years 1996-97 through 2011-12, the Department of Transportation must use ten million dollars (\$10,000,000) of the funds it receives each year under 23 U.S.C. Chapter 1, Federal-Aid Highways, to construct the urban loops described in G.S. 136-180. G.S. 136-176(c) does not apply to federal funds required to be used under this section for Intrastate System projects or urban loops, nor does it apply to any funds from the Highway Fund that were used to match these federal funds."

Sec. 16. Article 14 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-185. Maintenance reserve created in certain circumstances.

If the Highway Trust Fund has not terminated but all contracts for the projects of the Intrastate System described in G.S. 136-179 have been let and the amount collected and allocated for the Intrastate System is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for projects of the Intrastate System, all subsequent allocations of revenue for the Intrastate System shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the projects of the Intrastate System.

If the Highway Trust Fund has not terminated but all contracts for the urban loops described in G.S. 136-180 have been let and the amount collected and allocated for the urban loops is enough to pay the contracts and retire any bonds issued under the State Highway Bond Act of 1996 for the urban loops, then all subsequent allocations of revenue for the urban loops shall be credited to a reserve account within the Trust Fund. Revenue in this reserve may be used only to maintain the urban loops."

Sec. 17. Effective date. This act is effective upon ratification, except that Sections 6, 7, 15, and 16 shall become effective upon the certification of a favorable vote on the bonds by the State Board of Elections to the Secretary of State as provided in Section 9 of this act.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES
PERTAINING TO DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a current or former spouse of the aggrieved party or by a person of the opposite sex with whom the aggrieved party lives or has lived as if married; by a person with whom the aggrieved party has or has had a familial relationship, but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury by the threat of force; injury; or
- (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

~~(b) Notwithstanding the provisions of subsection (a) above, domestic violence also means the commission of one or more of the following acts upon a minor residing with or in the custody of the aggrieved party by a current or former spouse of the aggrieved party or by a person of the opposite sex with whom the aggrieved party lives or has lived as if married:~~

- ~~(1) Attempting to cause bodily injury, or intentionally causing bodily injury;~~
- ~~(2) Placing the minor in fear of imminent serious bodily injury by the threat of force; or~~
- ~~(3) Committing any act defined in G.S. 14-27.2 through 14-27.7.~~

(b) For purposes of this section, the term 'familial relationship' means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;
- (4) Have a child in common."

Sec. 2. G.S. 50B-3 reads as rewritten:

"§ 50B-3. Relief.

(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;

- (2) Grant to a ~~spouse party~~ possession of the residence or household of the parties and exclude the other ~~spouse party~~ from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from ~~harassing or interfering with the other; and doing any or all of the following:~~
 - a. Threatening, abusing, or following the other party,
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
 - c. Otherwise interfering with the other party; and
- (10) Award costs and attorney's fees to either party.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides."

Sec. 3. G.S. 50B-4 reads as rewritten:

"§ 50B-4. *Enforcement of orders.*

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. Said party may file and proceed with such motion pro se, using forms provided by the Clerk of Superior Court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers

through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(b) A law-enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from ~~harassing or interfering with the victim, doing any or all of the acts specified in G.S. 50B-3(a)(9),~~ and if the victim, or someone acting on the victim's behalf, presents the law-enforcement officer with a copy of the order or the officer determines that such an order exists, and can ascertain the contents thereof, through phone, radio or other communication with appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer from securing a warrant for the arrest of a person who is subject to warrantless arrest. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil or criminal contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

(c) Valid protective orders entered pursuant to this section shall be enforced by all North Carolina law-enforcement agencies without further order of the court.

(d) Valid protective orders entered by the courts of another state or Indian tribe shall be accorded full faith and credit by the courts of North Carolina and shall be enforced by the law-enforcement agencies of North Carolina."

Sec. 4. G.S. 1-110 reads as rewritten:

"§ 1-110. Suit as an indigent; counsel.

Any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

- (1) Receives food stamps.
- (2) Receives Aid to Families with Dependent Children (AFDC).
- (3) Receives Supplemental Security Income (SSI).
- (4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
- (5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
- (6) Is seeking to obtain a domestic violence protective order pursuant to G.S. 50B-2.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge

the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious."

Sec. 5. G.S. 50-13.2 reads as rewritten:

"§ 50-13.2. *Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.*

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence. Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation. If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, 'grandparent' includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child."

Sec. 6. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1200

CHAPTER 592

AN ACT TO REVISE THE PARTICIPATION FORMULA OF THE NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-45-25 reads as rewritten:

"§ 58-45-25. ~~Each member of Association to participate in its writings, expenses, profits and losses in proportion to net direct premium of such member, profits, and losses.~~

~~All members of the Association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premium of such member written in this State during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the Association, as certified to the Association by the Commissioner after review of annual statements, other reports and any other statistics the Commissioner shall deem necessary to provide the information herein required and which the Commissioner is hereby authorized and empowered to obtain from any member of the Association, provided, however, that a member shall annually receive credit for essential property insurance voluntarily written in the beach area and its participation in the writings in the Association shall be reduced accordingly. Each member's participation in the Association shall be determined annually in the same manner as the initial determination. All members of the Association shall participate in its expenses, profits, and losses and shall receive credit annually for essential property insurance voluntarily written as determined by the directors of the Association, with the approval of the Commissioner. Participation of each member in the losses of the Association shall be reduced accordingly. Any insurer authorized to write and engage in writing any insurance, the writing of which requires such the insurer to be a member of the Association, pursuant to the provisions of G.S. 58-45-10, who is authorized and engaged in writing such insurance after April 17, 1969, shall become a member of the Association on the January 1 immediately following such authorization and the determination of such the insurer's participation in the Association shall be made as of the date of such membership in the same manner as for all other members of the Association."~~

Sec. 2. G.S. 58-45-5(6) is repealed.

Sec. 3. The directors of the North Carolina Insurance Underwriting Association (Beach Plan), in consultation with the Department of Insurance, shall develop a plan to revise the participation formula of the Plan in a manner that encourages insurance companies to write voluntary policies in the beach area or other areas of the State and to write themselves out of the losses of the Plan, to apply to the 1997-98 fiscal year. In connection with the development of the plan, the Department and Association shall determine the reasons insurance companies are not writing voluntary coverage on properties in the beach area of the State, considering, among other factors, that the companies may cede wind risks to the Association. The directors shall report to the Legislative Research Commission's Study Committee on Insurance and Insurance-Related Issues on their findings and the revised formula on or before October 15, 1996.

Sec. 4. Sections 1 and 2 of this act become effective October 1, 1996, and apply to policies issued or renewed on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 1157

CHAPTER 593

AN ACT TO CODIFY AND CLARIFY THE STATE BOARD OF ELECTIONS' RULING CONCERNING CONTRIBUTIONS TO STATE CAMPAIGNS BY FEDERAL COMMITTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.7A. Gifts from federal political committees.

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee:

- (1) Is registered with the State Board of Elections consistent with the provisions of this Article;
- (2) Complies with reporting requirements specified by the State Board of Elections;
- (3) Makes its contributions within the limits specified in this Article; and
- (4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

AN ACT TO REVISE THE SOLID WASTE MANAGEMENT ACT OF 1989 AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-290(a)(5) is repealed.

Sec. 2. G.S. 130A-290(a) is amended by adding a new subdivision to read:

"(13a) 'Industrial solid waste' means solid waste generated by manufacturing or industrial processes that is not hazardous waste."

Sec. 3. G.S. 130A-290(a)(18a) reads as rewritten:

"(18a) 'Municipal solid waste' means any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations."

Sec. 4. G.S. 130A-290(a)(24) reads as rewritten:

"(24) 'Recovered materials' means those materials which have material' means a material that has known recycling potential, can be feasibly recycled, and have has been diverted or removed from the solid waste stream for sale, use, or reuse by separation, collection, or processing. reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. 130A-309.05(c)."

Sec. 5. G.S. 130A-290(a)(35) reads as rewritten:

"(35) 'Solid waste' means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans; humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and

disposal systems which are designed to discharge effluents to the surface ~~waters; waters.~~

2. Irrigation return ~~flows; and flows.~~

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this ~~Article;~~ Article.

c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this ~~Article;~~ Article.

d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).

e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

f. Recovered material."

Sec. 6. G.S. 130A-294(a)(3) reads as rewritten:

"(3) Develop and adopt rules to establish standards for qualification as a ~~waste~~ 'recycling, reduction or resource recovering facility' or as ~~waste~~ 'recycling, reduction or resource recovering equipment' for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;"

Sec. 7. G.S. 130A-294(b) reads as rewritten:

"(b) The Commission shall adopt and the Department shall enforce rules to implement a comprehensive statewide solid waste management program. The rules shall be consistent with applicable State and federal law; and shall be designed to protect the public health, safety, and welfare; preserve the environment; and provide for the greatest possible conservation of cultural and natural resources. Rules for the establishment, location, operation, maintenance, use, discontinuance, recordation, post-closure care of solid waste management facilities also shall be based upon recognized public health practices and procedures, including applicable epidemiological research and studies; hydrogeological research and studies; sanitary engineering research and studies; and current technological development in

equipment and methods. The rules shall not apply to the management of solid waste that is generated by an individual or individual family or household unit on the individual's property and is disposed of on the individual's property.

The Commission ~~may~~ shall adopt rules for financial responsibility to ensure the availability of sufficient funds for closure and post-closure maintenance and monitoring at solid waste management facilities, and for any corrective action the Department may require during the active life of a facility or during the closure and post-closure periods. The rules may permit demonstration of financial responsibility through the use of a letter of credit, insurance, surety, trust agreement, financial test, or guarantee by corporate parents or third parties who can pass the financial test. The rules shall require that an owner or operator of a privately owned solid waste management facility demonstrate financial responsibility by a method or combinations of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for a period of not less than 30 years after closure even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State."

Sec. 8. G.S. 130A-309.04 reads as rewritten:

"§ 130A-309.04. *State solid waste management policy and goals.*

(a) It is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills and to assist units of local government with solid waste management. In furtherance of this State policy, there is established a hierarchy of methods of managing solid waste, in descending order of preference:

- (1) Waste reduction at the source;
- (2) Recycling and reuse;
- (3) Composting;
- (4) Incineration with energy ~~production;~~ recovery;
- (5) Incineration ~~for volume reduction;~~ without energy recovery;
- (6) Disposal in landfills.

(b) It is the policy of the State to encourage research into innovative solid waste management methods and products and to encourage regional solid waste management projects.

(c) It is the goal of this State to reduce the municipal solid waste stream, primarily through source reduction, reuse, recycling, and composting, ~~on a per capita basis, on the following schedule:~~ by forty percent (40%) on a per capita basis by 30 June 2001.

- (1) ~~Twenty-five percent (25%) by 30 June 1993.~~
- (2) ~~Forty percent (40%) by 30 June 2001.~~

(c1) To measure progress toward the municipal solid waste reduction ~~goals~~ goal in a given year, comparison shall be made between the amount by weight of the municipal solid waste that, during the baseline year and the given year, is received at municipal solid waste management facilities and is:

- (1) Disposed of in a landfill;
- (2) Incinerated;
- (3) Converted to tire-derived fuel; or

(4) Converted to refuse-derived fuel. —

(c2) Comparison shall be between baseline and given years beginning on 1 July and ending on 30 June of the following year. The baseline year shall be the year beginning 1 July 1991 and ending 30 June 1992. However, a unit of local government may use an earlier baseline year if it demonstrates to the satisfaction of the Department that it has sufficient data to support the use of the earlier baseline year.

~~(c3) If a unit of local government is unable to meet the municipal solid waste reduction goal established in subdivision (2) of subsection (c) of this section and if the unit of local government demonstrates to the satisfaction of the Department that it has considered all reasonably available options to reduce its municipal solid waste stream through source reduction, reuse, recycling, and composting and that it has made a good faith effort and done everything technologically and economically feasible to meet the goal, for the purpose of calculating progress of the unit of local government toward the goal, ten percent (10%) of the amount by weight of the municipal solid waste stream that is converted to tire-derived fuel or refuse-derived fuel may be added to the amount that is diverted from the municipal solid waste stream through source reduction, reuse, recycling, and composting.~~

(d) In furtherance of the State's solid waste management policy, each State agency shall develop a solid waste management plan ~~which~~ that is consistent with the solid waste management policy of the State.

(d1) It is the policy of the State to obtain, to the extent practicable, economic benefits from the recovery from solid waste and reuse of material and energy resources. In furtherance of this policy, it is the goal of the State to foster partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable and reusable materials and that foster opportunities for economic development from the recovery and reuse of materials.

~~(e) Each county, either individually or in cooperation with others, shall, in cooperation with its municipalities, develop a comprehensive county solid waste management plan and submit the plan to the Department for approval. County solid waste management plans shall be updated and submitted for approval at least once every two years. A county solid waste management plan shall be consistent with the State's comprehensive solid waste plan. In counties where a municipality operates the major solid waste disposal facility, the comprehensive solid waste plan may be prepared by the municipality, with the approval of the county and in cooperation with the other municipalities. Each county's comprehensive solid waste management plan shall include provisions which address the State's waste reduction goals. Each county's plan shall take into consideration facilities and other resources for management of solid waste which may be available through private enterprise. This section shall be construed to encourage the involvement and participation of private enterprise in solid waste management. The Department shall develop a form designed to elicit pertinent information regarding a county's solid waste management plan. The Department shall provide assistance in the preparation of county plans upon request.~~

~~(f) Any unit of local government that does not participate in a county solid waste management plan shall prepare a plan in accordance with the provisions of subsection (e) of this section."~~

Sec. 9. G.S. 130A-309.05 reads as rewritten:

"§ 130A-309.05. *Regulated wastes; certain exclusions.*

(a) Notwithstanding other provisions of this Article, the following waste shall be regulated pursuant to this Part:

(1) Medical waste; and

(2) Ash generated by a solid waste management facility from the burning of solid waste.

(b) Ash generated by a solid waste management facility from the burning of solid waste shall be disposed of in a properly designed solid waste disposal area that complies with standards developed by the Department for the disposal of the ash. The Department shall work with solid waste management facilities ~~which~~ that burn solid waste to identify and develop methods for recycling and reusing incinerator ash or treated ash.

(c) ~~Recovered materials are material is not subject to the provisions of this Part if:~~ regulation as solid waste under this Article. In order for a material that would otherwise be regulated as solid waste to qualify as a recovered material, the Department may require any person who owns or has control over the material to demonstrate that the material meets the requirements of this subsection. In order to protect public health and the environment, the Commission may adopt rules to implement this subsection. In order to qualify as a recovered material:

(1) A majority of the recovered ~~materials~~ material at a facility ~~are~~ shall be sold, used, or reused within one year;

(2) ~~The recovered materials material or the products or by-products of operations that process recovered materials are material shall not be discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that the products or by-products or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters including groundwaters, or otherwise enter the environment or pose a threat to public health and safety; and~~

(3) ~~The recovered materials are material shall not be a hazardous waste and or have not been recovered from solid waste which is defined as hazardous waste under G.S. 130A-290, a hazardous waste."~~

Sec. 10. G.S. 130A-309.06 reads as rewritten:

"§ 130A-309.06. *Additional powers and duties of the Department.*

(a) In addition to other powers and duties set forth in this Part, the Department shall:

(1) Develop a comprehensive solid waste management plan consistent with this ~~Part by 1 March 1991, Part.~~ The plan shall be developed in consultation with units of local government and shall be updated at least every three years. In developing the State solid waste management plan, the Department shall hold public hearings around the State and shall give notice of these public

hearings to all units of local government and regional planning agencies.

- (2) Provide guidance for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the State.
 - (3) Encourage coordinated local activity for solid waste management within a common geographical area.
 - (4) Provide planning, technical, and financial assistance to units of local government and State agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal.
 - (5) Cooperate with appropriate federal ~~agencies~~ agencies, local governments, and private organizations in carrying out the provisions of this Part.
 - (6) Promote and assist the development of solid waste reduction, recycling, and resource recovery programs ~~which~~ that preserve and enhance the quality of the air, water, and other natural resources of the State.
 - (7) Maintain a directory of recycling and resource recovery systems in the State and provide assistance with matching recovered materials with markets.
 - (8) Manage a program of grants for programs for recycling and special waste management, and for programs ~~which~~ that provide for the safe and proper management of solid waste.
 - (9) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.
 - (10) Develop descriptive literature to inform units of local government of their solid waste management responsibilities and opportunities.
 - ~~(11) Conduct at least one workshop each year in each region served by a council of governments.~~
 - (12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park.
 - (13) Identify, based on reports required under G.S. 130A-309.14 and any other relevant information, those materials in the municipal solid waste stream that are marketable in the State or any portion thereof and that should be recovered from the waste stream prior to treatment or disposal.
 - (14) Identify and analyze, with assistance from the Department of Commerce pursuant to G.S. 130A-309.14, components of the State's recycling industry and present and potential markets for recyclable materials in this State, other states, and foreign countries.
- (b) The Department may refuse to issue a permit to an applicant who by past conduct in this State has repeatedly violated related statutes, rules,

orders, or permit terms or conditions relating to any solid waste management facility and who is deemed by the Department to be responsible for the violations. For the purpose of this subdivision, an applicant includes the owner or operator of the facility, or, if the owner or operator is a business entity, the parent of the subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than fifty percent (50%) of the stock of the corporation.

(c) The Department shall prepare by 1 May March of each year a report on the status of solid waste management efforts in the State. The scope of the report shall be determined by the resources available to the Department for its preparation and, to the extent possible, shall include:

- (1) A comprehensive analysis, to be updated in each report, of solid waste generation and disposal in the State projected for the 20-year period beginning on 1 July 1991.
- (2) The total amounts of solid waste ~~generated, recycled, recycled~~ and disposed of and the methods of solid waste recycling and disposal used during the calendar year prior to the year in which the report is published.
- (3) An evaluation of the development and implementation of local solid waste management programs and county and municipal recycling programs.
- (4) An evaluation of the success of each county or group of counties in meeting the municipal solid waste reduction goal established in G.S. 130A-309.04.
- (5) Recommendations concerning existing and potential programs for solid waste reduction and recycling that would be appropriate for units of local government and State agencies to implement to meet the requirements of this Part.
- (6) An evaluation of the markets for recycled materials and the success of State, local, and private industry efforts to enhance the markets for ~~such~~ these materials.
- (7) Recommendations to the Governor and the ~~General Assembly~~ Environmental Review Commission to improve the management and recycling of solid waste in the ~~State~~ State, including any proposed legislation to implement the recommendations.

(d) ~~The Department of Environment, Health, and Natural Resources shall prepare by March 1, 1994, and every other year thereafter, a report assessing the recycling industry and recyclable materials markets in the State. State every two years, and shall submit the report to the Environmental Review Commission on or before 1 March of even-numbered years. The report shall include information on progress in recycling polystyrene in the State."~~

Sec. 11. G.S. 130A-309.07 reads as rewritten:

"§ 130A-309.07. *State solid waste management plan.*

The State solid waste management plan shall include, at a minimum:

- (1) Procedures ~~and requirements~~ to ~~ensure~~ encourage cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate,

including the establishment of joint agencies pursuant to G.S. 160A-462.

- (2) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.
- (3) Planning guidance and technical assistance to counties and municipalities to aid in meeting the municipal solid waste reduction goals established in G.S. 130A-309.04.
- (4) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of recycling solid waste reduction programs.
- (5) Technical assistance to counties and municipalities in determining the full cost for solid waste management as required in G.S. 130A-309.08.
- (6) Planning guidance and technical assistance to counties and municipalities to assist the development and implementation of programs for alternative disposal, processing, or recycling of the solid wastes prohibited from disposal in landfills pursuant to G.S. 130A-309.10 and for special wastes.
- (7) A public education program, to be developed in cooperation with the Department of Public Instruction, units of local government, other State agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the State. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.
- (8) Provisions to encourage partnerships between the public and private sectors that strengthen the supply of, and demand for, recyclable materials and that foster opportunities for economic development from the recovery and reuse of materials."

Sec. 12. G.S. 130A-309.08 reads as rewritten:

"§ 130A-309.08. Determination of cost for solid waste management; local solid waste management fees.

(a) ~~Within one year of the effective date of this section or within one year after rules are adopted by the Commission, whichever occurs later, each~~ Each county and each municipality shall annually determine the full cost for solid waste management within the service area of the county or municipality for a one-year period as specified by rules adopted by the Commission, and shall update the full cost determination every year thereafter, the preceding year. The Commission shall establish by rule the method for units of local government to use in calculating full cost. ~~Rule making shall be initiated and at least one public hearing shall be held by 1 March 1990. In developing the rule, the Commission shall examine the feasibility of the use of an enterprise fund process by units of local government in operating their solid waste management systems.~~

(b) ~~Within one year after the completion of the cost determination required by subsection (a) of this section, each~~ Each municipality shall

establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (a) of this section. Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs ~~charges~~ charged to them or to persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services. Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(c) For purposes of this section, 'service area' means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise contract or other agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise contract or other agreement.

~~(d) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of G.S. 130A-309.09B, a county or a municipality which owns or operates a solid waste management facility may charge solid waste disposal fees which may vary based on a number of factors, including the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal. A county may charge fees for the collection, processing, or disposal of solid waste as provided in Article 15 of Chapter 153A of the General Statutes. A city may charge fees for the collection, processing, or disposal of solid waste as provided in Article 16 of Chapter 160A of the General Statutes.~~

~~(e) In addition to all other fees required or allowed by law, a county or a municipality, at the discretion of its governing board, may impose a fee for the services the county or municipality provides with regard to the collection, processing, or disposal of solid waste, to be used for developing and implementing a recycling program.~~

~~(f) This section does not prohibit a county, municipality, or other person from providing grants, loans, or other aid to low-income persons to pay part or all of the costs of such persons' solid waste management services."~~

Sec. 13. G.S. 130A-309.09A reads as rewritten:

"§ 130A-309.09A. Local government solid waste responsibilities.

(a) ~~The governing board of a designated local government shall provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas designated to be served by the facility.~~ each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall

implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. Pursuant to this section and notwithstanding any other provision of this Chapter, designated local governments A unit of local government may adopt ordinances governing the disposal disposal, in facilities which they operate that it operates, of solid waste generated outside of the area designated to be served by such the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of a designated the unit of local government. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by the municipality or county, any other municipality or county, or by any other person. Counties and municipalities may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities without facilities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in G.S. 130A-309.08(d). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided throughout the county.

(b) Each unit of local government, either individually or in cooperation with one or more other units of local government, shall participate in the development and implementation of a solid waste management plan designed to meet the waste reduction goals set out in G.S. 130A-309.04 within the geographic area covered by the plan.

Each unit of local government, either individually or in cooperation with other units of local government, shall develop a 10-year comprehensive solid waste management plan. Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan. Each unit of local government shall develop its solid waste management plan with public participation, including, at a minimum, one advertised public meeting. The Department shall assist units of local government in the preparation of the plan required by this subsection if the unit of local government requests assistance. Each plan shall be updated at least every three years. In order to assure compliance with this subsection, each unit of local government shall provide the Department with a copy of its current plan upon request by the Department. Each plan shall:

- (1) Evaluate the solid waste stream in the geographic area covered by the plan.
- (2) Include a goal for the reduction of municipal solid waste on a per capita basis by 30 June 2001 and a goal for the further reduction of municipal solid waste by 30 June 2006. The solid waste reduction goals shall be determined by the unit or units of local government that prepare the plan, and shall be determined so as to assist the State, to the maximum extent practical, to achieve the State's forty percent (40%) municipal solid waste reduction goal as set out in G.S. 130A-309.04(c).

- (3) Be designed to achieve the solid waste reduction goals established by the plan.
 - (4) Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.
 - (5) Include an assessment of current programs and a description of intended actions with respect to the following solid waste management methods:
 - a. Reduction at the source.
 - b. Collection.
 - c. Recycling and reuse.
 - d. Composting and mulching.
 - e. Incineration with energy recovery.
 - f. Incineration without energy recovery.
 - g. Transfer outside the geographic area covered by the plan.
 - h. Disposal.
 - (6) Include an assessment of current programs and a description of intended actions with respect to:
 - a. Education with the community and through the schools.
 - b. Management of special wastes.
 - c. Prevention of illegal disposal and management of litter.
 - d. Purchase of recycled materials and products manufactured with recycled materials.
 - (7) Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.
 - (8) Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.
- ~~(c) The Department may reduce or modify the municipal solid waste reduction goal that a unit of local government is required to attempt to achieve pursuant to subsection (b) of this section if the unit of local government demonstrates to the Department that:~~
- ~~(1) The achievement of the goal would have an adverse effect on the financial obligations of the unit of local government incurred prior to 1 October 1989 that are directly related to a waste-to-energy facility owned or operated by or on behalf of a unit of local government; and~~
 - ~~(2) The unit of local government cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility permitted prior to 1 July 1991 because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility. The goal may not be waived entirely and may be reduced or modified only to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a unit of local government's waste-to-energy facility. Nothing in this subsection shall exempt a unit of local government from developing and implementing a recycling program pursuant to this Part.~~

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each county, either individually or in cooperation with one or more other counties, shall, by 1 December 1991 and each year thereafter, unit of local government shall report to the Department on the solid waste management programs and recycling waste reduction activities within the county or the geographic area covered by the county's solid waste management plan, within the unit of local government by 1 September of each year. This report by the county must At a minimum, the report shall include:

- (1) A description of public education programs on ~~recycling;~~ recycling.
- (2) The amount of solid waste received at municipal solid waste management facilities, by type of solid ~~waste;~~ waste.
- (3) The amount and type of materials from the solid waste stream that were ~~recycled;~~ recycled.
- (4) The percentage of the population participating in various types of recycling activities ~~instituted;~~ instituted.
- (5) The annual reduction in municipal solid waste, measured as provided in G.S. ~~130A-309.04;~~ 130A-309.04.
- (6) ~~A description of the recycling activities attempted, their success rates, the perceived reasons for failure or success, and the recycling activities which are ongoing and most successful; and~~ Information regarding programs and other actions implemented as part of the local comprehensive solid waste management plan.
- (7) ~~In its first report, a description of any recycling activities implemented prior to 1 July 1991. A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.~~

~~(e) Any municipality that does not participate in the preparation of a county report shall prepare its own report in accordance with the provisions of subsection (d) of this section.~~

~~(f) On and after 1 July 1991, each~~ Each operator of a municipal solid waste management facility shall weigh all solid waste when it is received.

~~(g) A unit of local government that is a collector of municipal solid waste shall not knowingly collect for disposal, and the owner or operator of a municipal solid waste management facility that is owned or operated by a unit of local government shall not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:~~

- ~~(1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.~~
- ~~(2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste."~~

Sec. 14. G.S. 130A-309.09B reads as rewritten:

"§ 130A-309.09B. Local government ~~recycling~~ waste reduction programs.

(a) Each ~~designated~~ unit of local government shall ~~initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.~~ establish and maintain a solid waste reduction program that will

enable the unit of local government to meet the local solid waste reduction goals established pursuant to G.S. 130A-309.09A(b)(2). The following requirements shall apply:

- (1) ~~Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.~~ Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility, provided that ~~such~~ demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.
- (2) Repealed by Session Laws 1991, c. 621, s. 8.
- (3) Units of local government are encouraged to separate marketable plastics, glass, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other organic solid waste into compost available for agricultural and other acceptable uses.

(b) To the maximum extent practicable, units of local government should participate in the preparation and implementation of joint recycling waste reduction and solid waste management programs, whether through joint agencies established pursuant to G.S. 153A-421, G.S. 160A-462, or any other means provided by law. Nothing in a county's solid waste management or recycling waste reduction program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

~~(c) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and the franchisee fail to reach an agreement within 60 days from the initiation of negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposals, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of any franchise agreement for the collection of solid waste within a service area of the county or municipality.~~

~~(d) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on either a for-profit or nonprofit basis. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Part.~~

~~(e) A county or county and the municipalities within the county's or counties' boundaries may jointly develop a recycling program, provided that the county and each municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goals for municipal solid waste reduction are being achieved.~~

(f) A county or counties and its or their municipalities may jointly determine, through a joint agency established pursuant to G.S. 153A-421 or G.S. 160A-462, which local governmental agency shall administer a solid waste management or recycling waste reduction program.

~~(g) A unit of local government that enters into an agreement with one or more other units of local government to develop and operate a recycling program shall provide periodic written progress reports to the units of local government concerning the implementation of the recycling program."~~

Sec. 15. G.S. 130A-309.09C(g) reads as rewritten:

"(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, or the White Goods Management Account and the Department may notify the State Treasurer to withhold payment of all or a portion of funds payable to the unit of local government by the Department from the General Fund or by the Department from any other State fund, to the extent not pledged to retire bonded indebtedness, unless the unit of local government demonstrates that good faith efforts to meet the requirements of G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries, shall not receive the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes or the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes to which the unit of local government would otherwise be entitled. The Secretary shall notify the Secretary of Revenue to withhold payment of these funds to any unit of local government that fails to comply with the requirements of G.S. 130A-309.09A(b) and G.S. 130A-309.09B(a). Proceeds of the scrap tire disposal tax that are withheld pursuant to this subsection shall be credited to the Scrap Tire Disposal Account and may be used as provided in G.S. 130A-309.63. Proceeds of the white goods disposal tax that are withheld pursuant to this subsection shall be credited to the White Goods Management Account and may be used as provided in G.S. 130A-309.83."

Sec. 16. G.S. 130A-309.09D reads as rewritten:

"§ 130A-309.09D. Responsibilities of generators of municipal solid waste owners and operators of privately owned municipal solid waste management facilities, facilities and collectors of municipal solid waste.

(a) The A generator of municipal solid waste shall not knowingly dispose of, a collector of municipal solid waste shall not knowingly collect for

disposal, and the owner or operator of a privately owned or operated municipal solid waste management facility shall operate the facility in a manner which is consistent with the State solid waste management plan and with the solid waste management plans that have been adopted by those units of local government served by the facility and approved by the Department, not knowingly dispose of, any type or form of municipal solid waste that is generated within the boundaries of a unit of local government that by ordinance:

- (1) Prohibits generators or collectors of municipal solid waste from disposing of that type or form of municipal solid waste.
- (2) Requires generators or collectors of municipal solid waste to recycle that type or form of municipal solid waste.

(b) On or before 1 August 1992 and each year thereafter, August, the owner or operator of a privately owned municipal solid waste management facility shall report to the Department, for the previous year beginning 1 July and ending 30 June, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, such the reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which solid waste originated.

(c) A generator of industrial solid waste that owns and operates an industrial solid waste facility for the management of industrial solid waste generated by that generator shall develop a 10-year waste management plan. The plan shall be updated at least every three years. In order to assure compliance with this subsection, each generator to which this subsection applies shall provide the Department with a copy of its current plan upon request by the Department. Each generator to which this subsection applies shall file a report on its implementation of the plan required by this subsection with the Department by 1 August of each year. A generator to which this subsection applies may provide the Department with a copy of a current plan prepared pursuant to an ordinance adopted by a unit of local government or prepared for any other purpose if the plan meets the requirements of this subsection. The plan shall have the following components:

- (1) A waste reduction goal established by the generator.
- (2) Options for the management and reduction of wastes evaluated by the generator.
- (3) A waste management strategy, including plans for waste reduction and waste disposal, for the 10-year period covered by the plan."

Sec. 17. G.S. 130A-309.10 reads as rewritten:

"§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.

(a) No beverage shall be sold or offered for sale within the State in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab.

(b) No person shall distribute, sell, or offer for sale in this State, any product packaged in a container or packing material manufactured with fully

halogenated chlorofluorocarbons (CFC). Producers of containers or packing material manufactured with chlorofluorocarbons (CFC) are urged to introduce alternative packaging materials ~~which that~~ are environmentally compatible.

(c) (1) No plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material ~~which that~~ is recyclable. ~~Notice of recyclability shall be printed on each bag purchased by the retailer.~~

(2) It is the goal of the State that at least twenty-five percent (25%) of the plastic bags provided at retail outlets in the State to retail customers for carrying items purchased by the customer be recycled.

(d) (1) No person shall distribute, sell, or offer for sale in this State any polystyrene foam product ~~which that~~ is to be used in conjunction with food for human consumption unless ~~such the~~ product is composed of material ~~which that~~ is recyclable.

(2) Repealed by Session Laws 1995, c. 321, s. 1.

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container product container, including a plastic beverage container unless the product container has a molded label indicating the plastic resin used to produce the plastic container product container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the plastic container product and be clearly visible. ~~Plastic beverage containers~~ A container having a capacity of less than 16 eight fluid ounces, ounces or more than five gallons nonsolid food liquid containers having a capacity of less than 16 fluid ounces, and rigid plastic containers having a capacity of less than eight fluid ounces are is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters 'PETE' and the number 1.

(2) For high density polyethylene, the letters 'HDPE' and the number 2.

(3) For vinyl, the letter 'V' and the number 3.

(4) For low density polyethylene, the letters 'LDPE' and the number 4.

(5) For polypropylene, the letters 'PP' and the number 5.

(6) For polystyrene, the letters 'PS' and the number 6.

(7) For any other, ~~including multi-material containers,~~ the letters 'OTHER' and the number 7.

(f) ~~In accordance with the following schedule, no~~ No person shall knowingly dispose of the following solid wastes in landfills:

- (1) Repealed by Session Laws 1991, c. 375, s. 1.
- (2) Used oil.
- (3) Yard trash, except in landfills ~~classified for such use approved for the disposal of yard trash~~ under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
- (4) White goods.
- (5) Antifreeze (ethylene glycol).
- (6) Aluminum ~~cans, after July 1, 1994,~~ cans.
- (7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
- (8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(f1) ~~In accordance with the following schedule, no~~ No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

- (1) Antifreeze (ethylene glycol) used solely in motor ~~vehicles, after July 1, 1994,~~ vehicles.
- (2) Aluminum ~~cans, after July 1, 1994,~~ cans.
- (3) ~~Steel cans, unless the steel is recoverable at the end of the incineration process, after July 1, 1994.~~
- (4) ~~White goods, after July 1, 1994,~~ goods.
- (5) Lead-acid batteries, as provided in G.S. 130A-309.70.

(f2) ~~Provided that this subsection~~ Subsection (f1) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste; and provided further that this subsection waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) which that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(g) ~~Prior to the effective dates specified in this section, the Department shall identify and assist in developing alternative disposal, processing, or recycling options for the solid waste identified in this section.~~

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill or incineration shall not be construed as a violation of subsection (f) or (f1) of this section."

Sec. 18. G.S. 130A-309.11 reads as rewritten:

"§ 130A-309.11. *Compost standards and applications.*

(a) In order to protect the State's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the State must meet criteria established by the Department.

(b) ~~Within six months after the effective date of this section, the Department shall initiate rule making~~ The Commission shall adopt rules to establish standards for the production of compost. Rules shall be adopted

not later than 24 months after the initiation of rule making. Such rules shall include:

- (1) Requirements necessary to produce hygienically safe compost products for varying applications.
- (2) A classification scheme for compost based on:
 - a. The types of waste composted, including at least one type containing only yard trash;
 - b. The maturity of the compost, including at least three degrees of decomposition for fresh, semi-mature, and mature; and
 - c. The levels of organic and inorganic constituents in the compost.
- (c) The compost classification scheme shall address:
 - (1) Methods for measurement of the compost maturity.
 - (2) Particle sizes.
 - (3) Moisture content.
 - (4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the Department establishes, and the analytical methods to determine those levels.
- (d) ~~Within six months after the effective date of this section, the Department shall initiate rule making~~ The Commission shall adopt rules to prescribe the allowable uses and application rates of compost. Rules shall be adopted not later than 24 months after the initiation of rule making. Such rules shall be based on the following criteria:

- (1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.
- (2) The allowable uses of compost based on maturity and type of compost.

(e) If compost is produced which does not meet the criteria prescribed by the Department for agricultural and other use, the compost must be reprocessed or disposed of in a manner approved by the Department, unless a different application is specifically permitted by the Department."

Sec. 19. G.S. 130A-309.25(c) reads as rewritten:

"(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1996, 1998, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless such the person has completed an approved solid waste management facility operator training course."

Sec. 20. G.S. 130A-309.26(b) reads as rewritten:

"(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

- (1) Medical waste at facilities where medical waste is generated;
- (2) Medical waste from the point at which the waste is transported from the facility where it was generated;
- (3) On-site and off-site ~~incineration~~ treatment of medical waste; and

- (4) The off-site transport, storage, treatment or disposal of medical waste."

Sec. 21. G.S. 130A-309.53(7) reads as rewritten:

"(7) 'Tire' means a continuous solid or pneumatic rubber covering that encircles the wheel of a ~~vehicle and is subject to the tax imposed by Article 5B of Chapter 105~~ vehicle. Bicycle tires and other tires for vehicles propelled by human power are not subject to the provisions of this Part."

Sec. 22. G.S. 130A-309.58(b) reads as rewritten:

"(b) The Commission may adopt rules approving other permissible methods of scrap tire disposal. Landfilling of whole scrap tires is prohibited. The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings."

Sec. 23. G.S. 130A-309.63(e) reads as rewritten:

"(e) Reports. -- The Department shall ~~make quarterly reports~~ report annually on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall be submitted by 1 October of each year for the fiscal year ending the preceding 30 June. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the ~~quarter,~~ reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites. ~~A quarterly report shall be filed within 60 days after the end of a calendar quarter.~~"

Sec. 24. G.S. 130A-309.83 reads as rewritten:

"§ 130A-309.83. (*Repealed effective July 1, 1999*) *White Goods Management Account.*

(a) The White Goods Management Account is established within the Department. The Account consists of revenue credited to the Account from the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes.

(b) The Department shall use revenue in the Account to make grants to units of local government to assist them in managing discarded white goods. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit to manage white goods, the severity of a unit's white goods management problem, and the effort made by a unit to manage white goods within the resources available to it.

(c) A unit of local government is not eligible for a grant unless its costs of managing white goods for a six-month period preceding the date the unit files an application for a grant exceeded the amount the unit received during that period from the proceeds of the white goods disposal tax under G.S. 105-187.24. The Department shall determine the six-month period to be used in determining who is eligible for a grant. A grant to a unit may not exceed the unit's unreimbursed cost for the six-month period.

(d) If a unit of local government anticipates that its costs of managing white goods during a six-month period will exceed the amount the unit will receive during that period because the unit will make a capital expenditure

for the management of white goods or because the unit will incur other costs resulting from improvements to that unit's white goods management program, the unit may request that the Department make an advance determination that the costs are eligible to be paid by a grant from the White Goods Management Account and that there will be sufficient funds available in the Account to cover those costs. If the Department determines that the costs are eligible for reimbursement and that funds will be available, the Department shall reserve funds for that unit of local government in the amount necessary to reimburse allowable costs. The Department shall notify the unit of its determination and fund availability within 60 days of the request from the unit of local government. This subsection applies only to capital expenditures for the management of white goods and to costs resulting from improvements to a unit's white goods management program."

Sec. 25. G.S. 130A-309.85 reads as rewritten:

"§ 130A-309.85. (Effective until July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall ~~make an annual~~ report annually to the Environmental Review Commission concerning the management of white goods. The report shall be submitted by 1 October 1 of each year, ~~shall cover year for the fiscal year ending on the preceding June 30, and 30 June.~~ The report shall include the following information:

- (1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.
- (2) The cost to each county of managing white goods during the period covered by the report.
- (3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.
- (4) Any other information the Department considers helpful in understanding the problem of managing white goods."

Sec. 26. G.S. 130A-309.85 reads as rewritten:

"§ 130A-309.85. (Effective July 1, 1999) Department to submit annual report on the management of white goods.

The Department shall ~~make an annual~~ report annually to the Environmental Review Commission concerning the management of white goods. The report shall be submitted by 1 October 1 of each year, ~~shall cover year for the fiscal year ending on the preceding June 30, and 30 June.~~ The report shall include the cost to each county of managing white goods during the period covered by the report, the additional fees on white goods collected by each county during the period covered by the report, and any other information the Department considers helpful in understanding the problem of managing white goods."

Sec. 27. G.S. 153A-292 reads as rewritten:

"§ 153A-292. County collection and disposal facilities.

(a) The board of county commissioners of any county may establish and operate solid waste collection and disposal facilities in areas outside the corporate limits of a city. The board may by ordinance regulate the use of a disposal facility provided by the county, the nature of the solid wastes disposed of in a facility, and the method of disposal. The board may

contract with any city, individual, or privately owned corporation to collect and dispose of solid waste in the area. Counties and cities may establish and operate joint collection and disposal facilities. A joint agreement shall be in writing and executed by the governing bodies of the participating units of local government.

(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county.

(c) The board of county commissioners may use any suitable vacant land owned by the county for the site of a disposal facility, subject to the permit requirements of Article 9 of Chapter 130A of the General Statutes. If the county does not own suitable vacant land for a disposal facility, it may acquire suitable land by purchase or condemnation. The board may erect a gate across a highway that leads directly to a disposal facility operated by the county. The gate may be erected at or in close proximity to the boundary of the disposal facility. The county shall pay the cost of erecting and maintaining the gate.

(d), (e) Repealed by Session Laws 1991, c. 652, s. 1.

(f) This section does not prohibit a county from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons."

Sec. 28. G.S. 160A-314 is amended by adding a new subsection to read:

"(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons."

Sec. 29. Section 2 of Chapter 321 of the 1995 Session Laws is repealed.

Sec. 30. (a) Each unit of local government shall adopt a resolution approving the comprehensive solid waste management plan required by G.S. 130A-309.09A(b), as amended by Section 13 of this act, and shall begin implementation of the plan by 1 July 1997. Units of local government that prepared a solid waste management plan pursuant to G.S. 130A-309.09A(b) prior to the date this act becomes effective may, in lieu of developing a new plan, update their existing plan to meet the requirements of G.S. 130A-309.09A(b), as amended by Section 13 of this act.

(b) A generator of industrial waste who is required to develop a solid waste management plan by G.S. 130A-309.09D(c), as enacted by Section 16 of this act, is not required to complete the plan until 1 July 1997, and is not required to file a report on the implementation of the plan with the Department of Environment, Health, and Natural Resources until 1 August 1998.

Sec. 31. This act becomes effective 1 October 1996.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 375

CHAPTER 595

AN ACT TO ENLARGE THE MEMBERSHIP OF THE STANLY COUNTY ECONOMIC DEVELOPMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of Chapter 141 of the 1961 Session Laws, as added by Section 3 of Chapter 355 of the 1975 Session Laws, and amended by Chapters 185 and 928 of the 1987 Session Laws, reads as rewritten:

"Sec. 2.1. A designee of the Stanly County Chamber of Commerce and the President of the Stanly County Community Development Corporation shall serve as an voting ex-officio member ex officio members of the Industrial Development Commission in addition to the 12 members to be appointed by the Board of Commissioners for Stanly County, but said president shall not be entitled to a vote. County. The Stanly County Manager and the Stanly County Attorney shall also, by virtue of their respective office, offices, serve in a nonvoting ex officio capacity on the Economic Development Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 600

CHAPTER 596

AN ACT TO PROVIDE STAGGERED FOUR-YEAR TERMS FOR MEMBERS OF THE STANLY COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 667 of the Session Laws of 1957 is rewritten to read:

"Section 1. The Stanly County Board of Commissioners consists of five members elected by the qualified voters of that county. In 1998, five members shall be elected. The three persons receiving the highest numbers of votes are elected to four-year terms and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2000 and quadrennially thereafter, two persons are elected to four-year terms. In 2002 and quadrennially thereafter, three persons are elected to four-year terms. Terms begin on the first Monday in December of the year of election and continue until successors are elected and qualify."

Sec. 2. This act does not affect the terms of office of persons elected to the Stanly County Board of Commissioners in 1994 for four-year terms.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 725

CHAPTER 597

AN ACT TO EXEMPT RICHMOND COUNTY FROM CERTAIN RESTRICTIONS RELATING TO THE SALE OF HOSPITAL FACILITIES TO NONPROFIT CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-8(a) reads as rewritten:

"(a) A municipality as defined in G.S. 131E-6(5) or hospital authority as defined in G.S. 131E-16(14), upon such terms and conditions as it deems wise, with or without monetary consideration, may sell or convey to a nonprofit corporation organized under Chapter 55A of the General Statutes any rights of ownership the municipality or hospital authority has in a hospital facility including the building, land and equipment associated with the hospital, if the nonprofit corporation is legally committed to continue to operate the facility as a community general hospital open to the general public, free of discrimination based upon race, creed, color, sex or national origin. The nonprofit corporation shall also agree, as a condition of the municipality or hospital authority's conveying ownership, to provide such services to indigent patients as the municipality or hospital authority and the nonprofit corporation shall agree. ~~The nonprofit corporation shall further agree that should it fail to operate the facility as a community general hospital open to the general public or should the nonprofit corporation dissolve without a successor nonprofit corporation to carry out the terms and conditions of the agreement of conveyance, all ownership rights in the~~

~~hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital."~~

Sec. 2. This act applies to Richmond County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1113

CHAPTER 598

AN ACT TO CHANGE THE DATE FOR THE OATH OF OFFICE FOR MEMBERS OF THE RICHMOND COUNTY BOARD OF EDUCATION.

Whereas, Section 3.7 of Chapter 615 of the 1967 Session Laws, as amended by Section 1 of Chapter 128 of the 1983 Session Laws, provided that members of the Richmond County Board of Education shall take office on the last Monday in June of the year of their election; and

Whereas, Section 8 of Chapter 88 of the 1989 Session Laws repealed Chapter 128 of the 1983 Session Laws; and

Whereas, every present member of the Richmond County Board of Education has taken his or her oath of office in June following his or her election; and

Whereas, G.S. 115C-37(d) provides that newly elected members of boards of education shall take their oath of office in December following their election; and

Whereas, important decisions must be made between June and December following an election of school board members; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Richmond County Board of Education shall hold a meeting on the last Monday in June following the election of members of the board of education. At that June meeting, newly elected members of the Richmond County Board of Education shall qualify by taking the oath of office prescribed in Article VI, Section 7 of the Constitution.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1280

CHAPTER 599

AN ACT TO PERMIT ONE-STOP VOTING ON DIRECT RECORD VOTING EQUIPMENT IN WILSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 197 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act applies only to Gaston, Guilford, Mecklenburg, and Union Counties. Section 1 of this act also applies to Wilson County."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1360

CHAPTER 600

AN ACT TO CONFIRM THAT STANLY COUNTY MAY PURCHASE AND CONVEY PROPERTY TO THE STATE OF NORTH CAROLINA FOR USE AS A CORRECTIONAL FACILITY.

The General Assembly of North Carolina enacts:

Section 1. The County of Stanly has power under general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as a correctional facility.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.B. 1409

CHAPTER 601

AN ACT TO ESTABLISH THE CRIMINAL OFFENSES IN MONTGOMERY COUNTY OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 22A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 22A.

"Trespassing upon 'Posted' Property to Hunt,
~~Fish or Trap.~~ Fish, Trap, or Remove
Pine Needles or Pine Straw."

Sec. 2. G.S. 14-159.6 reads as rewritten:

"§ 14-159.6. *Trespass for purposes of hunting, etc., without written consent a misdemeanor.*

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or posters, described in G.S. 14-159.7, prohibiting hunting, fishing or trapping, or upon which 'posted' notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.

(b) Any person who willfully goes on the land of another upon which notices, signs or posters, described in G.S. 14-159.7, prohibiting the raking or removing of pine needles or pine straw without the written consent of the owner or the owner's agent shall be guilty of a Class 1 misdemeanor for the first offense, and of a Class I felony for second or subsequent offenses."

Sec. 3. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-79.1. Larceny of pine needles or pine straw.

If any person takes and carries away, or aids in taking or carrying away, any pine needles or pine straw being produced on the land of another person with the intent to steal the pine needles or pine straw, that person is guilty of a Class H felony."

Sec. 4. This act applies only to Montgomery County.

Sec. 5. This act becomes effective December 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

H.B. 332

CHAPTER 602

AN ACT TO CLARIFY THE DOMICILIARY AND NURSING HOME PENALTY ASSESSMENT LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34 reads as rewritten:

"§ 131D-34. Penalties; remedies.

(a) Violations Classified. -- The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any ~~facility~~ facility's licensee which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) 'Type A Violation' means a violation by a ~~facility~~ facility's licensee of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5000) for each Type A Violation.
- (2) 'Type B Violation' means a violation by a ~~facility~~ facility's licensee of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which present a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to two hundred fifty dollars (\$250.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, that

is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified.

(1) Where a ~~facility~~ facility's licensee has failed to correct a Type A Violation, the Department shall assess the ~~facility~~ facility's licensee a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a ~~facility~~ facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the ~~facility~~ facility's licensee a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the ~~same~~ management, ownership, or ~~control~~ control of that same licensee:

a. Has received a citation and paid a fine, or

b. Has received a citation for which the Department in ~~the~~ its discretion granted to it under subdivision (2) of subsection (a) did not impose a penalty,

for violating the same specific provision of a statute or regulation for which ~~it~~ the facility's licensee received a citation during the previous six months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the six-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any ~~facility~~ facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any ~~facility~~ facility's licensee wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department of Human Resources under this section shall commence on the day the violation began.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a ~~facility~~ facility's licensee:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care ~~facility~~ facility's licensee for Type B violations except those violations that have been previously cited against the long-term care ~~facility~~ facility's licensee during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

- (1) A licensed pharmacist;
- (2) A registered nurse experienced in long-term care;
- (3) A representative of a nursing home;
- (4) A representative of a domiciliary home; and
- (5) Two public members. One shall be a 'near' relative of a nursing home patient, chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. One shall be a 'near' relative of a rest home ~~patient~~, resident chosen from a list prepared by the Office of State Long-Term Care Ombudsman, Division of Aging, Department of Human Resources. For purposes of this subdivision, a 'near'

relative is a spouse, sibling, parent, child, grandparent, or grandchild.

Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or domiciliary home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Sec. 2. G.S. 131E-129 reads as rewritten:

"§ 131E-129. Penalties.

(a) Violations classified. The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility facility's licensee which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) Type A Violation means a violation by a facility facility's licensee of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious physical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each Type A Violation.
 - (2) Type B Violation means a violation by a facility facility's licensee of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.
- (b) Penalties for failure to correct violations within time specified.
- (1) Where a facility facility's licensee has failed to correct a Type A Violation, the Department shall assess the facility facility's licensee a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

- (2) Where a ~~facility~~ facility's licensee has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the ~~facility~~ facility's licensee a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.
- (3) The Department shall impose a civil penalty on a facility's licensee which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the ~~same~~ management, ownership, or ~~control~~; control of that same licensee:
- a. Has received a citation and paid a fine, or
 - b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,
- for violating the same specific provision of a statute or regulation for which ~~it~~ the facility's licensee has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.
- (c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:
- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
 - (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
 - (3) The number and type of previous violations committed by the licensee;
 - (4) The amount of assessment necessary to insure immediate and continued compliance; and
 - (5) The number of patients put at risk by the violation.
- (d) The Department shall impose a civil penalty on any ~~facility~~ facility's licensee which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.
- (e) Any ~~facility~~ facility's licensee wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a ~~facility~~ facility's licensee:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care ~~facility~~ facility's licensee for Type B violations except those violations that have been previously cited against the long-term care ~~facility~~ facility's licensee during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1072

CHAPTER 603

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO CHANGE THE NAME OF PEMBROKE STATE UNIVERSITY TO THE UNIVERSITY OF NORTH CAROLINA AT PEMBROKE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-2(4) reads as rewritten:

"(4) 'Constituent institution' or 'institution' means one of the 16 public senior institutions, to wit, the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke', Western Carolina University, and Winston-Salem State University."

Sec. 2. G.S. 116-4 reads as rewritten:

"§ 116-4. *Constituent institutions of the University of North Carolina.*

On July 1, 1972, the University of North Carolina shall be composed of the following institutions: the University of North Carolina at Chapel Hill, North Carolina State University at Raleigh, the University of North Carolina at Greensboro, the University of North Carolina at Charlotte, the University of North Carolina at Asheville, the University of North Carolina at

Wilmington, Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke', Western Carolina University and Winston-Salem State University."

Sec. 3. G.S. 116-5(a) reads as rewritten:

"(a) Commencing July 1, 1972, and continuing for the terms hereinafter stated and until their successors are chosen, the Board of Governors shall consist of the following members:

- (1) Three persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of East Carolina University and two persons elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Appalachian State University, North Carolina Agricultural and Technical State University, North Carolina Central University, and Western Carolina University.
- (2) One person elected prior to January 1, 1972, by and from the membership of the board of trustees of each of the following institutions: Elizabeth City State University, Fayetteville State University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke', and Winston-Salem State University.
- (3) Sixteen persons elected prior to January 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina.
- (4) Two persons elected prior to January 1, 1972, by the Board of Higher Education from its eight members-at-large. These shall be nonvoting members whose terms shall expire on June 30, 1973."

Sec. 4. G.S. 116-12 reads as rewritten:

"§ 116-12. *Property and obligations.*

All property of whatsoever kind and all rights and privileges held by the Board of Higher Education and by the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated effective July 1, 1996, as the 'University of North Carolina at Pembroke', Western Carolina University and Winston-Salem State University, as said property, rights and privileges may exist immediately prior to July 1, 1972, shall be, and hereby are, effective July 1, 1972, transferred to and vested in the Board of Governors of the University of North Carolina. All obligations of whatsoever kind of the Board of Higher Education and of the Boards of Trustees of Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina School of the Arts, Pembroke State University, redesignated

effective July 1, 1996, as the 'University of North Carolina at Pembroke', Western Carolina University and Winston-Salem State University, as said obligations may exist immediately prior to July 1, 1972, shall be, and the same hereby are, effective July 1, 1972, transferred to and assumed by the Board of Governors of the University of North Carolina. Any property, real or personal, held immediately prior to July 1, 1972, by a board of trustees of a constituent institution for the benefit of that institution or by the University of North Carolina for the benefit of any one or more of its six institutions, shall from and after July 1, 1972, be kept separate and distinct from other property held by the Board of Governors, shall continue to be held for the benefit of the institution or institutions that were previously the beneficiaries and shall continue to be held subject to the provisions of the respective instruments, grants or other means or process by which any property right was acquired. In case a conflict arises as to which property, rights or privileges were held for the beneficial interest of a particular institution, or as to the extent to which such property, rights or privileges were so held, the Board of Governors shall determine the issue, and the determination of the Board shall constitute final administrative action. Nothing in this Article shall be deemed to increase or diminish the income, other revenue or specific property which is pledged, or otherwise hypothecated, for the security or liquidation of any obligations, it being the intent that the Board of Governors shall assume said obligations without thereby either enlarging or diminishing the rights of the holders thereof."

Sec. 5. G.S. 147-45 reads as rewritten:

"§ 147-45. *Distribution of copies of State publications.*

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

<u>Agency or Institution</u>	<u>Session Laws</u>	<u>Assembly Journals</u>
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1

Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment, Health, and Natural		
Resources, Department of	1	0
Division of Environmental Management	2	0
Board of Environment, Health, and		
Natural Resources	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Developmental		
Disabilities, and Substance Abuse Services,		
Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission,		
North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5

Publications Division	1	1
Crime Control and Public Safety,		
Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the		
Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and		
Technical University	2	1

North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University of		
North Carolina, <u>Pembroke</u>	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J.C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0

Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in NC	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Sec. 6. The General Statutes are further amended by substituting the phrase "University of North Carolina at Pembroke" for the phrase "Pembroke State University" wherever that phrase may appear.

Sec. 7. (a) All statutory and other legal authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations or other funds of Pembroke State University remain those of the University of North Carolina at Pembroke.

(b) Nothing in this act requires the immediate replacement of any stationery, other supplies, or any emblems or other symbols used by the University of North Carolina at Pembroke as they existed prior to the enactment of this act.

Sec. 8. This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it.

Sec. 9. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 125

CHAPTER 604-

AN ACT TO ALLOW CANCELLATION BY EXHIBITION OF A NOTE SECURED BY A DEED OF TRUST OR MORTGAGE REGARDLESS OF THE DATE OF ENDORSEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-73 relating to secured instruments which secure future advances, any deed of trust or mortgage or other instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be discharged and released of record in the following manner:

(1) By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:

- a. The trustee,
- b. The mortgagee,
- c. The legal representative of a trustee or mortgagee, or
- d. A duly authorized agent or attorney of any of the above.

The register of deeds is not required to verify or make inquiry concerning the authority of the person acknowledging the satisfaction to do so. Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgment of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall also affix his name thereto.

(2) By exhibition of any deed of trust, mortgage or other instrument accompanied with the bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing ~~thereon, dated on or before December 31, 1995, thereon~~ and made by:

- a. The obligee,
- b. The mortgagee,
- c. The trustee,
- d. An assignee of the obligee, mortgagee, or trustee, or
- e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof. ~~If the endorsement of payment and satisfaction is undated, no cancellation may be made pursuant to this subdivision.~~

The register of deeds is not required to verify or make inquiry concerning the authority of the person making the endorsement of payment and satisfaction to do so. Upon

exhibition of the instruments, the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the mortgage, deed of trust or other instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the mortgage, deed of trust or other instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it. ~~The register of deeds may require the person exhibiting the instruments for cancellation to furnish him an acknowledgment of cancellation of the mortgage, deed of trust or other instrument for the purpose of showing upon whose request and exhibition the mortgage, deed of trust or other instrument was canceled.~~

(3) By exhibiting to the register of deeds by:

- a. The grantor,
- b. The mortgagor, or
- c. An agent, attorney or successor in title of the grantor or mortgagor

of any mortgage, deed of trust or other instrument intended to secure the payment of money or the performance of any other obligation, together with the bond, note or other instrument secured thereby, or by exhibition of the mortgage, deed of trust or other instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of exhibition, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so exhibited have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

The register of deeds shall cancel the mortgage, deed of trust, or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

- (4) By exhibition to the register of deeds of any deed of trust given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Upon exhibition of the deed of trust, and the evidences of indebtedness properly marked, the register of deeds shall cancel such deed of trust by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction upon the margin of the record, which record, or entry if made, shall be valid and binding upon all persons, if no person rightfully entitled to the deed of trust or evidences of indebtedness has previously notified the register of deeds in writing of the loss or theft of the instrument or evidences of indebtedness and has caused the register of deeds to record the notice or loss or theft in a separate document, as required by G.S. 161-14.1.

Upon receipt of written notice of loss or theft of the deed of trust or evidences of indebtedness the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice. The deed of trust shall not be canceled after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

Every entry of acknowledgment of satisfaction or of satisfaction made or witnessed by the register of deeds as provided in subdivision (a)(1) shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded.

- (5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The notice of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the notice.

Upon exhibition of the notice of satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning

the authority of the person executing the notice of satisfaction to do so.

- (6) By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an 'affidavit of lost note', signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.

Upon exhibition of the certificate of satisfaction and accompanying evidence of indebtedness endorsed paid and satisfied, or upon exhibition of an affidavit of lost note, the register of deeds shall record the certificate of satisfaction and either the accompanying evidence of indebtedness or the affidavit of lost note, and shall cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the certificate of satisfaction to do so."

Sec. 2. G.S. 47-46.3 reads as rewritten:

"§ 47-46.3. *Affidavit of lost note.*

The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument ~~has been~~ was satisfied on _____, 19____, and the affiant is responsible for cancellation of the same.

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19____.

[Signature and seal of notary public or other official authorized to administer oaths]."

Sec. 3. This act is effective upon ratification. _____

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 294

CHAPTER 605

AN ACT TO LIMIT THE ISSUANCE AND RENEWAL OF BARBER CERTIFICATES, PERMITS, AND LICENSES, TO ESTABLISH LATE FEES FOR EXPIRED CERTIFICATES, TO MAKE CERTAIN REVISIONS TO THE LAW GOVERNING THE BOARD OF BARBER EXAMINERS AND THE SANITARY RULES, AND TO MAKE CONFORMING CHANGES TO THE COSMETIC ART ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 86A-3 reads as rewritten:

"§ 86A-3. *Qualifications for certificate as a registered barber.*

A certificate of registration as a registered barber shall be issued by the Board to any person who meets all of the following qualifications:

- (1) Has attended an approved barber school for at least 1528 ~~hours;~~ hours.
- (2) Has completed a 12-month apprenticeship under the supervision of a licensed barber, as provided in G.S. 86A-24; and 86A-24.
- (3) Has passed a clinical examination conducted by the ~~Board; and Board.~~
- (4) Has submitted to the Board the signatures of three barbers registered in North Carolina, one of whom has supervised the applicant, the affidavit required by G.S. 86A-24(c) certifying that the applicant has served the apprenticeship required by subsection subdivision (2)."

Sec. 2. G.S. 86A-4 reads as rewritten:

"§ 86A-4. *State Board of Barber Examiners; appointment and qualifications; term of office; removal.*

(a) The State Board of Barber Examiners is established to consist of ~~four~~ five members appointed by the Governor. ~~Three~~ Four shall be licensed barbers; the other shall be a person who is not licensed under this Chapter and who shall represent the interest of the public at large.

(b) ~~All members serving on the Board on June 30, 1981, shall complete their respective terms. The Governor shall appoint the public member not later than July 1, 1981. No member appointed to the Board on or after July 1, 1981, shall serve more than two complete consecutive three-year terms, except that each member shall serve until his~~ the member's successor is appointed and qualifies.

No person who has been employed by the North Carolina State Board of Barber Examiners and has been removed for just cause shall be appointed within five years of the removal to serve as a Board member.

(c) The Governor may remove any member for good cause shown and may appoint members to fill unexpired terms."

Sec. 3. G.S. 86A-6 reads as rewritten:

"§ 86A-6. *Office; seal; officers and executive secretary; funds.*

The Board shall maintain a suitable office in Raleigh, and shall adopt and use a common seal for the authentication of its orders and records. The Board shall annually elect its own officers, and in addition, may elect or appoint a full-time executive secretary who shall not be a member of the Board, and whose salary shall be fixed by the Board. The executive secretary shall turn over to the State Treasurer to be credited to the State Board of Barber Examiners all funds collected or received ~~by him~~ under this Chapter, the funds to be held and expended under the supervision of the Director of the Budget, exclusively for the enforcement and administration of the provisions of this Chapter. Nothing herein shall be construed to authorize any expenditure in excess of the amount available from time to time in the hands of the State Treasurer derived from fees collected under the provisions of this Chapter and received by the State Treasurer pursuant to the provisions of this section."

Sec. 4. G.S. 86A-11(a) reads as rewritten:

"(a) The Board may grant a temporary permit to work to a graduate of a barber school in North Carolina provided application for examination has been filed and fee paid. The permit is valid only until the date of the next succeeding Board examination of applicants for apprenticeship registration except in cases of undue hardship as the Board may determine, unless it is revoked or suspended earlier by the Board. In no event shall a temporary permit be issued or remain valid after the holder has twice failed the apprentice examination required by G.S. 86A-24(a). The permittee may operate only under the supervision of a licensed ~~barber~~. barber and may work only at the registered barbershop specified in the permit."

Sec. 5. G.S. 86A-13 reads as rewritten:

"§ 86A-13. *Barbershop and barber school permits.*

(a) Any person, firm or corporation, before establishing or opening a barbershop or barber school not heretofore licensed by the State or the Board shall make application to the Board on forms to be furnished by the Board, for a permit to operate a barbershop or barber school, and the shop or school of the applicant shall be inspected and approved by the State Board

of Barber Examiners or an agent designated for that purpose by the Board, before the barbershop or barber school may open for business. It is unlawful to open a new or reopened barbershop or barber school until that shop or school has been inspected and determined by the Board to be in compliance with the requirements of G.S. 86A-15 in the case of shops and G.S. 86A-15 and 86A-22 in the case of schools. Upon compliance by the applicant with all requirements set forth in G.S. 86A-15, and the payment of the prescribed fee the Board shall issue to the applicant the permit applied for. Notwithstanding any other provision of this Chapter, no person, firm, or corporation shall be issued a permit to operate a barbershop in a location registered as a barber school, nor shall any person, firm, or corporation be issued a permit to operate a barber school in a location registered as a barbershop.

(b) The owners of every registered barbershop and barber school shall annually, on or before May 31 of each year, renew the barbershop's or barber school's certificate of registration and pay the required renewal fee. Every certificate of registration for any barbershop or barber school shall expire on the 31st day of May in each year. Any certificate of registration issued under this Chapter shall be suspended automatically by operation of law after failure to renew the certificate of registration by the expiration date. The owner of any barbershop or barber school whose certificate of registration has expired may, after the barbershop or barber school has been inspected as required in subsection (a) of this section, have the certificate restored immediately upon paying all lapsed renewal fees and the required late fee."

Sec. 6. G.S. 86A-14 reads as rewritten:

"§ 86A-14. Persons exempt from the provisions of this Chapter.

The following persons are exempt from the provisions of this Chapter while engaged in the proper discharge of their duties:

- (1) Persons authorized under the laws of the State to practice medicine and surgery, and those working under their supervision;
- (2) Commissioned medical or surgical officers of the U.S. Army or other components of the U.S. armed forces, and those working under their supervision;
- (3) Registered nurses and licensed practical nurses and those working under their supervision;
- (4) Licensed embalmers and funeral directors and those working under their supervision;
- (5) Persons who are working in licensed cosmetic shops or beauty schools and are licensed by the State Board of Cosmetic Art Examiners. Examiners pursuant to Chapter 88 of the General Statutes; and
- (6) Persons who are working in licensed barber shops and are licensed by the State Board of Cosmetic Art Examiners pursuant to Chapter 88 of the General Statutes, provided that those persons shall comply with G.S. 86A-15."

Sec. 7. G.S. 86A-15(a) reads as rewritten:

"(a) Each barber and each owner or manager of a barbershop, barber school or college, or any other place where barber service is rendered, shall comply with the following sanitary rules and regulations:

(1) Proper quarters. --

- a. Every barbershop, or other place where barber service is rendered, shall be located in buildings or rooms of such construction that they may be easily cleaned, well lighted, well ventilated and kept in an orderly and sanitary condition.
- b. Each area where barber service is rendered or where a combination of barber service and cosmetology service is rendered shall be separated by a substantial partition or wall from areas used for ~~other purposes~~ purposes other than barber services, cosmetology services, or shoe shining services.
- c. Walls, floor and fixtures where barber service is rendered are to be kept sanitary.
- d. Running water, hot and cold, shall be provided, and ~~lavatories~~ sinks shall be located at a convenient place in each barbershop so that ~~each barber~~ barbers may wash ~~his~~ their hands after each haircut. Tanks and lavatories shall be of such construction that they may be easily cleaned. The lavatory must have a drain pipe to drain all waste water out of the building.
- e. Every barbershop or other place where barber service is rendered, and every building or structure used as a part of a barber school, shall comply with applicable building and fire codes and regulations.

(2) Equipment and instruments. --

- a. Each person serving as a barber shall, immediately before using razors, tweezers, combs, contact cup or pad, sterilize the instruments by immersing them in a solution of fifty percent (50%) alcohol, five percent (5%) carbolic acid, twenty percent (20%) formaldehyde, or ten percent (10%) lysol or other product or solution that the Board may approve. Every owner or manager of a barbershop shall supply a separate container for the use of each barber, adequate to provide for a sufficient supply of the above solutions.
- b. Each barber shall maintain combs and hair brushes in a clean and sanitary condition at all times and shall thoroughly clean mug and lather brush before each separate use.
- c. The headrest of every barber chair shall be protected with clean paper or a clean laundered towel. Each barber chair shall be covered with a smooth nonporous surface, such as vinyl or leather, that is cleaned easily.
- d. Every person serving as a barber shall use a clean towel for each patron. All clean towels shall be placed in closed cabinets until used. Receptacles composed of material that can be washed and cleansed shall be provided to receive used towels, and all used towels must be placed in receptacles until

laundered. Towels shall not be placed in a sterilizer or tank or rinsed in the barbershop. All wet and used towels shall be removed from the work-stand or lavatory after serving each patron.

- e. Whenever a hair cloth is used in cutting the hair, shampooing, etc., a newly laundered towel or paper neckstrap shall be placed around the patron's neck so as to prevent the hair cloth from touching the skin. Hair cloths shall be replaced when soiled.

(3) Barbers. --

- a. Every person serving as a barber shall thoroughly cleanse his or her hands immediately before serving each patron.
 - b. Each person working as a barber shall be clean both as to person and dress.
 - c. No barber shall serve any person who has an infectious or communicable disease, and no barber shall undertake to treat any patron's infectious or contagious disease. ~~Each barber practicing the profession in North Carolina shall furnish the Board of Barber Examiners a satisfactory health certificate at such time as the Board may deem necessary.~~
- (4) Any person, other than a registered barber, shall before undertaking to give shampoos in a barbershop furnish the Board with a health certificate on a form provided by the Board.
- (5) The owner or manager of a barbershop or any other place where barber service is rendered shall post a copy of these rules and regulations in a conspicuous place in the shop or other place where the services are rendered."

Sec. 8. G.S. 86A-16 reads as rewritten:

"§ 86A-16. *Certificates to be displayed.*

Every holder of a certificate of registration as a registered barber, registered apprentice, shop permit, ~~school permit or instructor's certificate~~ school permit, instructor's certificate, or temporary permit issued pursuant to G.S. 86A-11 shall display it in a conspicuous place adjacent to or near his the person's work chair."

Sec. 9. G.S. 86A-17 reads as rewritten:

"§ 86A-17. *Renewal or restoration of certificate.*

(a) ~~Every registered barber who continues~~ Registered barbers who continue in practice shall annually, on or before May 31 of each year, renew his their certificate certificates of registration and furnish such health certificate as the Board may require and pay the required renewal fee. Every certificate of registration shall expire on the 31st day of May in each year. Any certificate of registration issued under this Chapter is automatically suspended by operation of law after failure to renew the certificate of registration by the expiration date.

(b) A registered barber whose certificate of registration has expired may have ~~his the~~ certificate restored immediately upon paying ~~the required registration fee~~ all lapsed renewal fees and the required late fee and furnishing a health certificate if required by the Board; provided, however, a registered barber whose certificate has expired for a period of five years

shall be required to take the clinical examination prescribed by the State Board of Barber Examiners and otherwise comply with the provisions of this Chapter before engaging in the practice of barbering. No registered barber who is reissued a certificate under this subsection shall be required to serve an apprenticeship as a prerequisite to reissuance of ~~his~~ the certificate.

(c) All persons serving in the United States armed forces and ~~any person~~ persons whose ~~certificate~~ certificates of registration as a registered barber ~~was~~ were in force one year prior to entering service may, without taking the required examination, renew ~~his certificate~~ their certificates within 90 days after receiving an honorable discharge, by paying the current annual license fee and furnishing the State Board of Barber Examiners with a satisfactory health certificate if required by the Board."

Sec. 10. G.S. 86A-22(2) reads as rewritten:

"(2) (i) Each school shall have at least two instructors, except that ~~nonprofit schools that are nonprofit educational institutions with a curriculum and continuing education support system established with a State university or community college~~ shall have at least one instructor for every 20 enrolled ~~students, provided the one instructor may not conduct classroom lectures and study periods, or lectures and demonstrations on practical work, during the same time the one instructor is providing students with supervised practice in barbering,~~ students. Each instructor must hold a valid instructor's certificate issued by the Board. (ii) ~~Programs established in post-secondary institutions shall be authorized only after they have been evaluated through the academic program approval processes as established by the respective governing boards. The boards, in evaluating instructional and fiscal resources included in the documents submitted requesting authority to offer programs in barbering, shall determine that standards are in place to ensure that programs established remain in compliance with appropriate accreditation agencies. At least one instructor must be on the premises of a barber school during regular instruction hours.~~"

Sec. 11. G.S. 86A-22(3) reads as rewritten:

"(3) An application for a student's ~~permit~~ permit, and ~~a doctor's certificate, on forms a form~~ prescribed by the Board, must be filed with the Board before the student enters school. No student may enroll without having obtained a student's permit."

Sec. 12. G.S. 86A-23 reads as rewritten:

"§ 86A-23. *Instructors.*

(a) The Board shall issue an instructor's certificate to any currently registered barber who has passed an instructor's examination given by the Board. This examination shall cover the subjects listed in G.S. 86A-22(4) and ~~any other subjects which the Board deems necessary for the teaching of sanitary barbering,~~ in the Textbook of Barber Styling approved by the Board.

(b) A person desiring to take an instructor's examination must make application to the Board for examination on forms to be furnished by the Board and pay the instructor's examination fee. Each person who passes the

instructor's examination shall be issued a certificate of registration as a registered instructor by paying the issuance fee and the instructor's certificate shall be renewable as of the 31st day of May of each year, fee. Every instructor's certificate shall expire on May 31 of each year. Any instructor's certificate issued under this Chapter is automatically suspended by operation of law after failure to renew the instructor's certificate by the expiration date and may be renewed only upon payment of all lapsed renewal fees and the required late fee. Any person whose instructor's certificate has expired for a period of three years or more shall be required to take and pass the instructor's examination before the certificate can be renewed."

Sec. 13. G.S. 86A-24(b) reads as rewritten:

"(b) An apprentice license ~~may be renewed annually on the payment of the prescribed fee.~~ expires on May 31 of each year. Every holder of an apprentice license shall annually renew the apprentice license by the expiration date and pay the required renewal fee. An apprentice license issued under this Chapter is automatically suspended by operation of law after failure to renew the apprentice license by the expiration date. An apprentice whose apprentice license has expired may have the certificate restored immediately upon paying all lapsed renewal fees and the required late fee. The certificate of registration of an apprentice is valid only so long as ~~he~~ the apprentice works under the supervision of a registered barber. No apprentice shall operate a barbershop."

Sec. 14. G.S. 86A-25 reads as rewritten:

"§ 86A-25. *Fees collectible by Board.*

The State Board of Barber Examiners shall charge fees not to exceed the following:

Certificate of registration or renewal as a barber	\$ 30.00
Certificate of registration or renewal as an apprentice barber	30.00
Barbershop permit or renewal	30.00
Examination to become a registered barber	50.00
Examination to become a registered apprentice barber	50.00
Restoration of an expired certificate of a registered apprentice, registered barber or barbershop permit within the first year \$10.00 plus renewal fee; after the first year \$20.00 plus lapsed fees up to 5 years	
<u>Late fee for restoration of an expired barber certificate within first year after expiration</u>	<u>20.00</u>
<u>Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration</u>	<u>40.00</u>
<u>Late fee for restoration of an expired apprentice certificate within first year after expiration</u>	<u>20.00</u>
<u>Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate</u>	<u>25.00</u>
<u>Late fee for restoration of an expired barbershop certificate</u>	<u>25.00</u>
Examination to become a barber school instructor	95.00

Student permit	15.00
Issuance of any duplicate copy of a license, certificate <u>certificate</u> , or permit	7.50
Barber school permit or renewal	75.00
<u>Late fee for restoration of an expired barber school</u> <u>certificate</u>	<u>50.00</u>
Barber school instructor certificate or renewal	50.00
<u>Late fee for restoration of an expired barber school</u> <u>instructor certificate within first year after expiration</u>	<u>25.00</u>
<u>Late fee for restoration of an expired barber school</u> <u>instructor certificate after first year after expiration but</u> <u>within three years after expiration</u>	<u>50.00</u>
Inspection of newly established barbershop	70.00
Inspection of newly established barber school	125.00
Issuance of a registered <u>barber</u> or apprentice certificate by certification	70.00
<u>Barbers 70 years and older certificate or</u> <u>renewal</u>	<u>No charge".</u>

Sec. 15. G.S. 88-1(a) reads as rewritten:

"(a) ~~On and after June 30, 1933, no~~ No person or combination of persons shall, for pay or reward, either directly or indirectly, practice or attempt to practice cosmetic art as hereinafter defined in the State of North Carolina without a certificate of registration, either as a registered apprentice or as a registered 'cosmetologist,' issued pursuant to the provisions of this Chapter by the State Board of Cosmetic Art ~~Examiners hereinafter established and, except Examiners, as provided in G.S. 88-7.1; the~~ The practice of cosmetic art shall not be performed outside of a licensed and regularly inspected beauty ~~establishment, establishment, unless the practice~~ is allowed under G.S. 88-7.1 or occurs in a barbershop licensed under Chapter 86A of the General Statutes. A person who practices cosmetic art in a barbershop must comply with G.S. 86A-15."

Sec. 16. G.S. 88-23(a)(1) reads as rewritten:

"(a) (1) The State Board of Cosmetic Art Examiners ~~shall have the authority to make~~ may adopt a reasonable curriculum and rules for recognized schools and colleges of beauty culture and ~~make~~ may adopt reasonable rules and ~~regulations~~ for the sanitary management of cosmetic art shops, beauty parlors, hairdressing establishments, cosmetic art schools, colleges, academies and training schools, hereinafter called shops and schools, and to have ~~such~~ the curriculum and rules and the sanitary rules and ~~regulations~~ enforced. The Board may not require a shop to be separated from a building or room used for the purpose of providing barber services. The duly authorized agents of said the Board shall have authority to enter upon and inspect any shop or school at any time during business hours. A copy of the curriculum and rules and the sanitary rules and regulations shall be furnished from the office of the Board or by the above mentioned authorized agents an agent of the Board to the owner or manager of each

shop or ~~school in the State, and such school~~. The copy shall be kept posted in a conspicuous place in each shop and school, and a copy of the curriculum and rules for ~~recognized schools and colleges of beauty culture~~ shall be kept posted in a conspicuous place in each ~~school and the rules and regulations complied with as required by this Chapter~~, school. Each shop and school shall comply with the rules."

Sec. 17. Sections 1, 4 through 6, and 8 through 13 of this act become effective July 1, 1996, and apply to applications for and renewal of certificates, permits, and licenses made on or after that date. G.S. 86A-15(a)(1)b., as enacted by Section 7 of this act is effective upon ratification and applies retroactively to July 1, 1995; the remainder of Section 7 becomes effective July 1, 1996. Section 14 of this act becomes effective July 1, 1996, and applies to dues and fees for years beginning with 1997. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1014

CHAPTER 606

AN ACT REQUIRING CRIMINAL HISTORY RECORD CHECKS OF UNLICENSED APPLICANTS FOR EMPLOYMENT IN NURSING HOMES, ADULT CARE HOMES, AND HOME CARE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.3 reads as rewritten:

"§ 114-19.3. *Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.*

(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check ~~to the employer~~ of an individual who is employed by or who that entity, has applied for employment with the following; that entity, or has volunteered to provide direct care on behalf of that entity:

- (1) Hospitals licensed under Chapter 131E of the General Statutes; ~~Statutes.~~
- (2) Nursing homes or combination homes licensed under Chapter 131E of the General ~~Statutes;~~ Statutes.
- (3) ~~Domiciliary care facilities~~ Adult care homes licensed under Chapter ~~131E~~ 131D of the General ~~Statutes;~~ Statutes.
- (4) Home care agencies or hospices licensed under Chapter 131E of the General ~~Statutes;~~ Statutes.
- (5) Child placing agencies licensed under Chapter 131D of the General ~~Statutes;~~ Statutes.
- (6) Residential child care facilities licensed under Chapter 131D of the General ~~Statutes;~~ Statutes.
- (7) Hospitals licensed under Chapter 122C of the General ~~Statutes;~~ Statutes.
- (8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General

Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of ~~Chapter 122C of the General Statutes; that Chapter.~~

- (9) Licensed child day care facilities and registered and nonregistered child day care ~~homes, homes~~ regulated by the ~~State; and State.~~
- (10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

(b) Procedure. -- A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the ~~employee or applicant~~ individual whose record is checked consents to the record check. The information shall be kept confidential by the ~~employer~~ entity that receives the information. Upon the disclosure of confidential information under this section by the ~~employer, entity,~~ the Department may refuse to provide further criminal record checks to that ~~employer, entity.~~

~~(c) The Department of Justice, at the request of an agency, facility, organization, or corporation listed in subsection (a) of this section, may provide a criminal record check of a volunteer who provides direct care on behalf of the organization or corporation if the volunteer consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency, facility, corporation, or organization, the Department may refuse to provide further criminal record checks to that agency, facility, corporation, or organization.~~

(d) Foster or Adoptive Parent. -- The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. -- The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars (\$14.00)."

Sec. 2. Chapter 131D of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Miscellaneous Provisions.

"§ 131D-40. Criminal history record checks required for certain applicants for employment.

(a) Requirement. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall

submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the adult care home or the administrator's designee shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. -- An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of

G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5."

Sec. 3. Chapter 131E of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Miscellaneous Provisions.

"§ 131E-255. Criminal history record checks required for certain applicants for employment.

(a) Requirement. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the nursing home or home care agency, or the administrator's designee, shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. -- An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, the term 'relevant offense' has the same meaning as in G.S. 131D-40."

Sec. 4. G.S. 114-19.1 reads as rewritten:

"§ 114-19.1. Fees for performing certain background investigations. Criminal history background investigations; fees.

(a) When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient

of such information a reasonable fee for retrieving such information. The fee authorized by this section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

(b) As used in this section, 'administration of criminal justice' means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

(c) In providing criminal history record checks, the Department of Justice shall process requests in the following priority order:

- (1) Administration of criminal justice record checks,
- (2) Mandatory noncriminal justice criminal history record checks,
- (3) Voluntary noncriminal justice criminal history record checks.

(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes."

Sec. 5. This act becomes effective January 1, 1997, except that the requirements imposed by Section 3 of this act on home care agencies become effective January 1, 1998. Sections 3 and 4 apply to applicants who apply for employment on or after the appropriate effective date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1163

CHAPTER 607

AN ACT TO PROVIDE LIENS ON REAL PROPERTY FOR THE FURNISHING OF RENTAL EQUIPMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-7 reads as rewritten:

"§ 44A-7. *Definitions.*

Unless the context otherwise requires in this Article:

- (1) 'Improve' means to build, effect, alter, repair, or demolish any improvement upon, connected with, or on or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, or to construct driveways and private roadways, or to furnish materials, including trees and shrubbery, for any of such purposes, or to perform any labor upon such improvements, and shall also mean and include any design or other professional or skilled services furnished by architects, engineers, land surveyors and landscape architects registered under Chapter 83A, 89A or 89C of the General ~~Statutes.~~ Statutes, and rental of

equipment directly utilized on the real property in making the improvement.

- (2) 'Improvement' means all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, or landscaping, including trees and shrubbery, driveways, and private roadways, on real property.
- (3) An 'owner' is a person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. 'Owner' includes successors in interest of the owner and agents of the owner acting within their authority.
- (4) 'Real property' means the real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon."

Sec. 2. G.S. 44A-8 reads as rewritten:

"§ 44A-8. *Mechanics', laborers' and materialmen's lien; persons entitled to lien.*

Any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment pursuant to a contract, either express or implied, with the owner of real property for the making of an improvement thereon shall, upon complying with the provisions of this Article, have a lien on such real property to secure payment of all debts owing for labor done or professional design or surveying services or material furnished or equipment rented pursuant to such contract."

Sec. 3. G.S. 44A-18 reads as rewritten:

"§ 44A-18. *Grant of lien; subrogation; perfection.*

Upon compliance with this Article:

- (1) A first tier subcontractor who furnished ~~labor or materials~~ labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds which are owed to the contractor with whom the first tier subcontractor dealt and which arise out of the improvement on which the first tier subcontractor worked or furnished materials.
- (2) A second tier subcontractor who furnished ~~labor or materials~~ labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds which are owed to the first tier subcontractor with whom the second tier subcontractor dealt and which arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of his lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the first tier subcontractor with whom he dealt provided for in subdivision (1) and shall be entitled to perfect it by notice to the extent of his claim.
- (3) A third tier subcontractor who furnished ~~labor or materials~~ labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds which are owed to the second tier subcontractor with whom the third tier subcontractor dealt and

which arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of his lien provided in this subdivision, shall also be entitled to be subrogated to the lien of the second tier subcontractor with whom he dealt and to the lien of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is entitled to be subrogated thereto, and in either case shall be entitled to perfect the same by notice to the extent of his claim.

- (4) Subcontractors more remote than the third tier who furnished ~~labor or material~~ labor, materials, or rental equipment at the site of the improvement shall be entitled to a lien upon funds which are owed to the person with whom they dealt and which arise out of the improvement on which they furnished ~~labor or material~~, labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.
- (5) The liens granted under this section shall secure amounts earned by the lien claimant as a result of his having furnished ~~labor or materials~~ labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, whether or not such amounts are due and whether or not performance or delivery is complete.
- (6) A lien upon funds granted under this section is perfected upon the giving of notice in writing to the obligor as provided in G.S. 44A-19 and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the lien of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23."

Sec. 4. This act becomes effective October 1, 1996, and applies to lien rights that arise on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1159

CHAPTER 608

AN ACT TO REPEAL THE SUNSET ON DESIGNATION OF EMPLOYMENT SECURITY COMMISSION OFFICES AS VOTER REGISTRATION AGENCIES AND TO PROVIDE FOR FUNDING.

The General Assembly of North Carolina enacts:

Section 1. Section 73 of Chapter 762 of the 1993 Session Laws, as amended by Section 25.10 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"Sec. 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification.

Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences. ~~G.S. 163-82.20(a)(3) and G.S. 163-82.20(b1) as enacted in Section 2 of this act expire July 1, 1996."~~

Sec. 2. G.S. 96-5(c) reads as rewritten:

"(c) There is hereby created in the State treasury a special fund to be known as the Special Employment Security Administration Fund. All interest and penalties, regardless of when the same became payable, collected from employers under the provisions of this Chapter subsequent to June 30, 1947 as well as any appropriations of funds by the General Assembly, shall be paid into this fund. No part of said fund shall be expended or available for expenditure in lieu of federal funds made available to the Commission for the administration of this Chapter. Said fund shall be used by the Commission for the payment of costs and charges of administration which are found by the Secretary of Labor not to be proper and valid charges payable out of any funds in the Employment Security Administration Fund received from any source and shall also be used by the Commission for: (i) extensions, repairs, enlargements and improvements to buildings, and the enhancement of the work environment in buildings used for Commission business; (ii) the acquisition of real estate, buildings and equipment required for the expeditious handling of Commission business; and (iii) the temporary stabilization of federal funds cash flow. The Employment Security Commission may use funds either from the Special Employment Security Commission Administration Fund created by this subsection or from federal funds, or from a combination of the two, to offset the costs of compliance with Article 7A of the General Statutes of North Carolina or compliance with P.L. 103-31. Refunds of interest allowable under G.S. 96-10, subsection (e) shall be made from this special fund: Provided, such interest was deposited in said fund: Provided further, that in those cases where an employer takes credit for a previous overpayment of interest on contributions due by such employer pursuant to G.S. 96-10, subsection (e), that the amount of such credit taken for such overpayment of interest shall be reimbursed to the Unemployment Insurance Fund from the Special Employment Security Administration Fund. The Special Employment Security Administration Fund, except as otherwise provided in this Chapter, shall be subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State treasury, and shall be maintained in a separate account on the books of the State treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund provided for under this Chapter. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All

sums recovered on any surety bond for losses sustained by the Special Employment Security Administration Fund shall be deposited in said fund. The moneys in the Special Employment Security Administration Fund shall be continuously available to the Commission for expenditure in accordance with the provisions of this section."

Sec. 3. The Employment Security Commission shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division no later than April 1 of every year as to how the funds authorized to be used by this act were expended.

Sec. 4. The Employment Security Commission shall report to the Election Law Reform Committee of the Legislative Research Commission by November 1, 1996, as to how the funds authorized to be used by this act were expended, as to improvements in procedures for voter registration, and as to voter registration statistics in Employment Security Commission offices.

Sec. 5. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1207

CHAPTER 609

AN ACT TO CLARIFY THE MAXIMUM PERIOD OF TIME A JUVENILE MAY BE COMMITTED IN ACCORDANCE WITH THE STRUCTURED SENTENCING ACT AS RECOMMENDED BY THE SENTENCING AND POLICY ADVISORY COMMISSION AND TO AMEND THE PROCEDURE FOR COURT-ORDERED TREATMENT OF A JUVENILE TO REQUIRE THE COUNTY TO ARRANGE FOR TREATMENT OF THE JUVENILE WHEN THE PARENT CANNOT AFFORD TO PAY THE COST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-646 reads as rewritten:

"§ 7A-646. *Purpose.*

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and ~~his~~ the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the judge should arrange for appropriate community-level services to be provided to the juvenile and ~~his~~ the juvenile's family in order to strengthen the home situation.

In choosing among statutorily permissible dispositions for a delinquent juvenile, the judge shall select the least restrictive disposition both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile. A juvenile should not be committed to training school or to any other institution if ~~he~~ the juvenile can be helped through community-level resources. Article 81B of Chapter 15A

of the General Statutes does not apply to juvenile dispositions, except as provided in G.S. 7A-652(c)."

Sec. 2. G.S. 7A-652(c) reads as rewritten:

"(c) In no event shall commitment of a delinquent juvenile be for a period of time in excess of ~~that period for which an adult could be committed for the same act.~~ the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense. Any juveniles committed for an offense for which an adult would be sentenced for 30 days or less A juvenile committed only for an offense that would be a Class 3 misdemeanor if committed by an adult shall be assigned to a local detention home as defined by G.S. 7A-517(15) or a regional home as defined by G.S. 7A-517(26)."

Sec. 3 G.S. 7A-647(3) reads as rewritten:

"(3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.

a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, he the judge shall allow permit the parent or other responsible persons to arrange for care, treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of such the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of care, treatment, the judge may charge the cost to the county. shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.

b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is mentally retarded developmentally disabled, the judge shall refer him the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental

health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet his the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Sec. 4. G.S. 7A-650 reads as rewritten:

"§ 7A-650. *Authority over parents of juvenile adjudicated as delinquent, undisciplined, abused, neglected, or dependent.*

(a) If the court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7A-647(3), the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) The court may order the parent to provide transportation for a juvenile to keep an appointment with a court counselor.

(b1) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, if the court finds that it is in the best interest of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the juvenile ~~and to pay the costs thereof. If the court finds that the parent is unable to pay the cost of the treatment, the court may charge the cost to the county of the juvenile's residence.~~ juvenile. The cost of the treatment shall be paid pursuant to G.S. 7A-647(3)a.

(b2) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, the court may determine whether the best interest of the juvenile requires that the parent undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent. If the court finds that the best interest of the juvenile requires the parent undergo treatment, it may order the parent to comply

with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent upon the parent's compliance with the plan of treatment. The court may order the parent to pay the cost of treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the parent upon the parent's compliance with a plan of treatment, the court may charge the cost of the treatment to the county of the juvenile's residence if the court finds the parent is unable to pay the cost of the treatment. In all other cases, if the court finds the parent is unable to pay the cost of the treatment ordered pursuant to this subsection, the court may order the parent to receive treatment currently available from the area mental health program that serves the parent's catchment area.

(c) Whenever legal custody of a juvenile is vested in someone other than the juvenile's parent, after due notice to the parent and after a hearing, the court may order that the parent pay a reasonable sum that will cover in whole or in part the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(d) Failure of a parent who is personally served to participate in or comply with subsections (a) through (c) may result in a civil proceeding for contempt."

Sec. 5. This act becomes effective December 1, 1996, and applies to dispositions for offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1358

CHAPTER 610

AN ACT TO AUTHORIZE THE CITY OF BURLINGTON, NORTH CAROLINA, TO CONVEY CERTAIN SURPLUS PROPERTY BY PRIVATE SALE TO HABITAT FOR HUMANITY OF ALAMANCE COUNTY, N.C., INC.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the North Carolina General Statutes, the City of Burlington, North Carolina, may convey certain real property acquired as part of a Community Development Block Grant Program for the revitalization of the Rauhut Street area of Burlington, North Carolina, now declared surplus real property, at a negotiated private sale to HABITAT FOR HUMANITY OF ALAMANCE COUNTY, N.C., INC., with monetary consideration, any and all of its right, title, and interest to the following described property:

LOT 1

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Jackson Street, Rosena Walker Heirs, an unopened alley, Lots 2 and 4 and others and being more particularly described as follows:

BEGINNING at an iron stake in the east right-of-way line of Jackson Street, said stake being a corner with Rosena Walker Heirs and lying north 3 deg. 48' 50" west 213.19 feet from the intersection of the east right-of-way line of Jackson Street and the north right-of-way line of Dudley Street and running thence from said beginning point with the line of Rosena Walker Heirs, north 88 deg. 45' 35" east 160.00 feet to an iron stake in the west right-of-way of an unopened alley; thence with the line of said alley, south 1 deg. 36' 30" east 50.01 feet to an iron stake, a corner with Lot No. 4; thence with the line of Lot No. 4 and continuing with the line of Lot No. 2 south 88 deg. 45' 35" west 158.08 feet to an iron stake in the east right-of-way line of Jackson Street; thence with the east right-of-way line of Jackson Street north 3 deg. 48' 50" west 50.09 feet to the BEGINNING and containing 8,008 square feet and being all of Lot No. 1, Subdivision of Property of City of Burlington, recorded in Plat Book 53, Page 52, in the office of the Alamance County Register of Deeds and being as shown on City of Burlington Engineering Department Drawing Number 3464-95.

LOT 2

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Jackson Street, Lots 1, 3, and 4 and being more particularly described as follows:

BEGINNING at an iron stake, said stake being a corner with Lot No. 1 in the east right-of-way line of Jackson Street and lying north 3 deg. 48' 50" west 163.10 feet from the intersection of the east right-of-way line of Jackson Street and the north right-of-way line of Dudley Street and running thence from said beginning point with the line of Lot No. 1, north 88 deg. 45' 35" east 97.29 feet to an iron stake, a corner with Lot No. 4; thence with the line of Lot No. 4, south 4 deg. 53' 34" east 70.00 feet to an iron stake, a corner with Lot No. 3; thence with the line of Lot No. 3, south 88 deg. 45' 35" west 98.60 feet to an iron stake in the east right-of-way line of Jackson Street; thence with the east right-of-way line of Jackson Street, north 3 deg. 48' 50" west 69.93 feet to the point of BEGINNING and containing 6,842 square feet and being all of Lot No. 2, Subdivision of Property of City of Burlington, recorded in Plat Book 53, Page 52, in the office of the Alamance County Register of Deeds and being as shown on City of Burlington Engineering Department Drawing Number 3464-95.

LOT 3

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Jackson Street, Lots 2 and 4 and Dudley Street and being more particularly described as follows:

BEGINNING at an iron stake in the east right-of-way line of Jackson Street, said stake being a corner with Lot No. 2 and lying south 3 deg. 48' 50" east 120.02 feet from a common corner with Rosena Walker Heirs and Lot No. 1 and running thence from said beginning point with the line of Lot No. 2, north 88 deg. 45' 35" east 98.60 feet to an iron stake, said stake being a corner with Lot No. 2 in the line of Lot No. 4; thence with the line of Lot No. 4, south 4 deg. 53' 34" east 81.07 feet to an iron stake in the north right-of-way line of Dudley Street; thence with the north right-of-way line of Dudley Street, south 65 deg. 32' 52" west 76.91 feet to an iron stake; thence north 59 deg. 07' 39" west 34.12 feet to an iron stake in the east right-of-way line of Jackson Street; thence with Jackson Street, north 3 deg. 48' 50" west 93.17 feet to the point of BEGINNING and containing 9,727 square feet and being all of Lot No. 3, Subdivision of Property of City of Burlington, recorded in Plat Book 53, Page 52, in the office of the Alamance County Register of Deeds and being as shown on City of Burlington Engineering Department Drawing Number 3464-95.

LOT 4

A certain tract or parcel of land in Burlington Township, Alamance County, North Carolina, adjoining the lands of Dudley Street, Lots 1, 2, and 3 and an unopened alley and being more particularly described as follows:

BEGINNING at an iron stake in the north right-of-way line of Dudley Street, said stake being a corner with Lot No. 3 and lying north 65 deg. 32' 52" east 76.91 feet from the intersection of the north right-of-way line of Dudley Street and the east right-of-way line of Jackson Street and running thence from said beginning point with the line of Lot No. 3 and continuing with the line of Lot No. 2, north 4 deg. 53' 34" west 151.07 feet to an iron stake, a corner with Lot No. 2 in the line of Lot No. 1; thence with the line of Lot No. 1, north 88 deg. 45' 35" east 60.79 feet to an iron stake in the east line of an unopened alley; thence with the line of said alley the following courses and distances: south 1 deg. 36' 30" east 13.99 feet to an iron stake; thence south 75 deg. 47' 35" west 10.00 feet to an iron stake; thence south 4 deg. 54' 20" east 100.00 feet to an iron stake; thence south 4 deg. 48' 05" east 13.84 feet to an iron stake in the north right-of-way line of Dudley Street; thence with the north right-of-way line of Dudley Street, south 65 deg. 32' 52" west 53.06 feet to the BEGINNING and containing 7,185 square feet and being all of Lot No. 4, Subdivision of Property of City of Burlington, recorded in Plat Book 53, Page 52, in the office of the Alamance County Register of Deeds and being as shown on City of Burlington Engineering Department Drawing Number 3464-95.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1371

CHAPTER 611

AN ACT TO EXEMPT THE COUNTY OF JOHNSTON FROM CERTAIN STATUTORY REQUIREMENTS RELATING TO THE CONSTRUCTION OF AN ANIMAL CONTROL FACILITY.

The General Assembly of North Carolina enacts:

Section 1. Johnston County may contract for the design and construction of an animal control facility without being subject to the requirements of G.S. 143-128, 143-129, 143-131, 143-133, 143-64.31, and 143-64.32. This authorization includes, if deemed appropriate by the Johnston County Board of County Commissioners, the use of the single-prime contractor method of design and construction or a request for proposals and negotiation as an alternative design and construction method.

Sec. 2. This act applies to Johnston County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1131

CHAPTER 612

AN ACT TO PERMIT EXTENSION OF CANDIDATE FILING FOR LOCAL OFFICES IN PASQUOTANK COUNTY WHEN THE COUNTY BOARD OF ELECTIONS OFFICE IS CLOSED ON THE LAST DAY FOR FILING DUE TO SEVERE WEATHER CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-106 is amended by adding a new subsection to read:

"(c1) Whenever a county board of elections office is closed due to severe weather conditions during the entire period from the opening of the office of the county board of elections on the last day for filing notices of candidacy under subsection (c) of this section until 12:00 noon on that day, notices of candidacy for county office or any office where the election district covers no part of any other county may be timely filed until 12:00 noon on the next business day that the county board of elections office is open."

Sec. 2. This act applies to Pasquotank County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1137

CHAPTER 613

AN ACT TO ALLOW THE TOWN OF FUQUAY-VARINA TO REVIEW ANY REQUEST FOR WITHDRAWAL OF DEDICATION OF ANY STREET OR STREET EASEMENT BEFORE ANY DEDICATION CAN BE WITHDRAWN.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Fuquay-Varina, being Chapter 167 of the Private Laws of 1915, is amended by adding a new section to read:

"Sec. 25.1. In addition to any other authority granted the Town to acquire land for streets and other purposes, the Town shall have power to accept by resolution the dedication of any land or interest in land for street, utility or other Town purposes, both inside and outside the corporate limits, whether such dedication is made or offered by deed, by recorded plat or otherwise. Notwithstanding the provisions of G.S. 136-96 or any other provisions of law, the acceptance of a street or street easement by resolution adopted pursuant to this section shall constitute a completed dedication and acceptance, and such dedication shall not thereafter be withdrawn except with written permission of the Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1156

CHAPTER 614**AN ACT TO ALLOW THE TOWN OF MOORESVILLE TO DONATE UNCLAIMED BICYCLES TO CHARITY.**

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of Asheville and Hendersonville and the Town of Mooresville only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1184

CHAPTER 615**AN ACT RELATING TO THE DUTY OF COMMISSIONERS OF THE WASHINGTON HOUSING AUTHORITY UNDER THE PROVISIONS OF ARTICLE 1 OF CHAPTER 157 OF THE GENERAL STATUTES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-6 reads as rewritten:

"§ 157-6. *Duty of authority and commissioners.*

The authority ~~and its commissioners~~ shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed."

Sec. 2. This act applies to the City of Washington and to the Washington Housing Authority only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1209

CHAPTER 616

AN ACT TO AUTHORIZE THE CITIES OF BREVARD AND HENDERSONVILLE TO CREATE SQUIRREL SANCTUARIES FOR THE PRESERVATION OF THE "BREVARD WHITE SQUIRREL".

The General Assembly of North Carolina enacts:

Section 1. A city may by ordinance create a squirrel sanctuary within the corporate limits of that city to regulate activities within the sanctuary which may or will harm any species of squirrel (family Sciuridae), and in particular the "Brevard White Squirrel". Any ordinance adopted for this purpose shall be consistent with the ordinance powers found in G.S. 160A-174 or any other law, and shall not protect any squirrel classified as a pest by the General Statutes, except that the "Brevard White Squirrel" may be protected regardless of such a classification. It is unlawful for any person to harm any species of squirrel in violation of such an ordinance.

Sec. 2. This act applies only to the cities of Brevard and Hendersonville.

Sec. 3. This act is effective upon ratification. Any ordinance authorized by this act but enacted by the city of Brevard prior to the effective date of this act is validated and shall be effective on and after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1215

CHAPTER 617

AN ACT TO AUTHORIZE THE ROCKINGHAM BOARD OF EQUALIZATION AND REVIEW TO MEET AFTER ITS FORMAL ADJOURNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322(e) reads as rewritten:

"(e) Time of Meeting. -- Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment,

the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below. Following its adjournment upon completion of its duties under subdivisions (g)(1) and (2) of this section, the board shall continue to meet to carry out its duties under G.S. 105-312(d) and (k)."

Sec. 2. This act applies to Rockingham County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1219

CHAPTER 618

AN ACT TO ALLOW THE COUNTY OF ALAMANCE AND THE CITIES LOCATED IN THAT COUNTY TO DONATE UNCLAIMED BICYCLES TO CHARITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 650 of the 1993 Session Laws, as amended by Chapter 106 of the 1995 Session Laws, reads as rewritten:

"Sec. 2. This act applies only to the Cities of Asheville and Hendersonville ~~only~~, and to the cities located in the County of Alamance."

Sec. 2. Notwithstanding the provisions of G.S. 153A-176 and Article 2 of Chapter 15 of the General Statutes, whenever unclaimed bicycles are in the possession of the sheriff's department, no earlier than 30 days after the date of publication of the notice required by G.S. 15-12, the county may donate the bicycles to a charitable organization exempt under section 501(c)(3) of the Internal Revenue Code rather than selling the bicycles as provided by law. In such case, the notice required by G.S. 15-12 shall state the intended disposition of the bicycles if they are not claimed.

Sec. 3. Section 2 of this act applies to the County of Alamance only.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1254

CHAPTER 619

AN ACT TO AMEND THE CHARTER OF THE CITY OF HAVELOCK CONCERNING THE POWERS OF THE CITY MANAGER.

The General Assembly of North Carolina enacts:

Section 1. Section 3A of the Charter of the City of Havelock, being Chapter 952 of the 1959 Session Laws, as added by ordinance under Part 4 of Article 5 of Chapter 160A of the General Statutes, reads as rewritten:

"Sec. 3A. *Council-manager form of government.*

- (a) The City of Havelock shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes of North Carolina and any charter provisions not in conflict therewith.

- (b) The board of commissioners shall appoint a city manager to serve at its pleasure. The city manager shall be appointed solely on the basis of his executive and administrative qualifications, he need not be a resident of the city or state at the time of his appointment, and he may hold such office concurrently with other appointed offices pursuant to Article VI, Section 9, of the North Carolina Constitution.
- (c) The city manager shall have the powers and duties described in ~~North Carolina General Statute~~ G.S. 160A-148, including any other duties that the Board of Commissioners may require or authorize.
- (d) The city manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the City of Havelock not elected by the people and whose appointment or removal is not otherwise provided by law, except the city attorney, in accordance with such general personnel rules, regulations, policies, and ordinances as the board of commissioners may adopt. Notwithstanding the contrary provisions of G.S. 105-349, the city manager may appoint and remove the tax collector for the City of Havelock, and the tax collector shall serve under the direction and at the will of the city manager."

Sec. 2. All existing ordinances, resolutions, and other provisions of the City of Havelock not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 3. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended general statute, or to the general statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1279

CHAPTER 620

AN ACT CONCERNING THE MANNER OF SELECTING THE MAYOR PRO TEMPORE OF THE TOWN OF MOUNT HOLLY.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding G.S. 160A-70, at the organizational meeting following each town election, the council member who received the highest number of votes for four-year terms at the regular municipal election held two years previously shall become mayor pro tempore, to serve until the next organizational meeting or until the person ceases to be a member of the council, whichever comes first.

(b) If, however, the person who received the highest number of votes is no longer a member of the council at the time that person would assume the office of mayor pro tempore under subsection (a) of this section, the

person with the next highest number of votes at that election shall become mayor pro tempore.

Sec. 2. This act applies to the Town of Mount Holly only.

Sec. 3. This act applies beginning with the organizational meeting after its ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1384

CHAPTER 621

AN ACT TO LIMIT THE HEIGHT OF STRUCTURES IN THE TOWN OF CALABASH AND TO ALLOW EXCEPTIONS TO THE HEIGHT LIMIT UPON APPROVAL BY REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. No building erected within the corporate limits of the Town of Calabash may have a height in excess of 35 feet above ground level unless:

- (1) The building was erected before the effective date of this act; or
- (2) Subject to the approval of the qualified voters of the Town of Calabash, the Town Council adopts an ordinance granting an exception to the height limit.

Sec. 2. The Town Council may direct the Brunswick County Board of Elections to conduct a referendum on the question of whether an exception to the height limitation imposed by this act should be granted. The election shall be held on a date jointly agreed upon by the two boards and shall be held in accordance with the procedures of G.S. 163-287. The form of the question to be presented on the ballot for special election concerning an exception to the height limit shall be:

"[] FOR [] AGAINST

Adoption of the ordinance to grant an exception to the height limit of 35 feet above ground level for buildings in the Town of Calabash, as follows: (describe the effect of the ordinance)."

If a majority of those voting in the referendum held pursuant to this act vote in favor of the adoption of the ordinance, the ordinance shall be effective pursuant to its terms.

Sec. 3. The height limitation created by Section 1 of this act does not apply to spires, belfries, cupolas, antennae, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1385

CHAPTER 622

AN ACT TO PROVIDE FOR A REFERENDUM IN BRUNSWICK COUNTY ON THE QUESTIONS OF CHANGING THE TERMS OF OFFICE OF THE BRUNSWICK COUNTY BOARD OF

COMMISSIONERS AND THE BRUNSWICK COUNTY BOARD OF EDUCATION FROM TWO YEARS TO FOUR YEARS.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of Chapter 444, Session Laws of 1977, as added by Section 1 of Chapter 373, Session Laws of 1991, reads as rewritten:

"Sec. 2.1. In 1992, the members of the board of commissioners up for election shall be elected to two-year terms. In 1994 ~~and biennially thereafter~~, all members of the board of commissioners shall be elected to two-year terms. In 1996, the three members of the board of commissioners who are elected and who receive the highest numbers of votes shall be elected to four-year terms, and the remaining two members of the board of commissioners shall be elected to two-year terms. In 1998 and quadrennially thereafter, two members of the board of commissioners shall be elected to four-year terms. In 2000 and quadrennially thereafter, three members of the board of commissioners shall be elected to four-year terms."

Sec. 2. Section 2.1 of Chapter 443, Session Laws of 1977, as added by Section 2 of Chapter 373, Session Laws of 1991, reads as rewritten:

"Sec. 2.1. In 1992, the members of the board of education up for election shall be elected to two-year terms. In 1994 ~~and biennially thereafter~~, all members of the board of education shall be elected to two-year terms. In 1996, the three members of the board of education who are elected and who receive the highest numbers of votes shall be elected to four-year terms, and the remaining two members of the board of education shall be elected to two-year terms. In 1998 and quadrennially thereafter, two members of the board of education shall be elected to four-year terms. In 2000 and quadrennially thereafter, three members of the board of education shall be elected to four-year terms."

Sec. 3. Sections 1 and 2 of this act shall only become effective if approved by the qualified voters of Brunswick County. The Brunswick County Board of Elections shall hold a referendum on the question on the Tuesday after the first Monday in November of 1996. The question on the ballot shall be:

"[] FOR [] AGAINST
election of the Brunswick County Board of Commissioners
and the Brunswick County Board of Education
for four-year terms."

The election shall be conducted in accordance with Chapter 163 of the General Statutes.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1414

CHAPTER 623

AN ACT RELATING TO THE CHARLOTTE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

Section 1. The first six sentences of Section 4.61 of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as rewritten by Chapter 449 of the 1979 Session Laws, and as represented to have been amended by ordinances of the City Council of the City of Charlotte adopted on July 27, 1981 (Ordinance Book 30, page 463) and October 12, 1992 (Ordinance Book 41, page 148), reads as rewritten:

"Sec. 4.61. There is hereby continued a Civil Service Board for the City of Charlotte, to consist of five ~~(5)~~ members, three ~~(3)~~ members and one alternate to be appointed by the City Council and two ~~(2)~~ members and one alternate to be appointed by the Mayor. Each member shall serve for a term of three (3) years. In case of a vacancy on the Board, the City Council or the Mayor, as the case may be, shall fill such vacancy for the unexpired term of said member. A majority of said Board For the purposes of establishing a quorum of the Board, any combination of Board members and alternates totaling three shall constitute a quorum. All board members and alternates shall attend regular meetings for the purposes of meeting attendance policy and familiarity with Board business and procedures. Alternates shall attend hearings when needed due to scheduling conflicts of regular Board members and shall vote only when serving in the absence of a regular Board member. Attendance at meetings and continued service on the Board shall be governed by the attendance policies established by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings or hearings shall be filled as provided herein."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1419

CHAPTER 624

AN ACT TO CHANGE THE LOCAL ALCOHOL BEVERAGE CONTROL BOARD AUDITS FROM QUARTERLY TO ANNUAL TO CONFORM TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 1004 of the 1965 Session Laws is amended by deleting "as determined by quarterly audit," and substituting "as determined by annual audit,".

Sec. 2. This act applies to the Faison Alcoholic Beverage Control Board only and to all audits to be filed on or after July 1, 1995.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1161

CHAPTER 625

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO IMPLEMENT AND MONITOR THE PLAN FOR THE TRANSFER OF

CREDITS BETWEEN NORTH CAROLINA INSTITUTIONS OF HIGHER EDUCATION.

Whereas, it is in the public interest that the North Carolina institutions of higher education have a uniform procedure for the transfer of credits from one community college to another community college and from the community colleges to the constituent institutions of The University of North Carolina; and

Whereas, the Board of Governors of The University of North Carolina and the State Board of Community Colleges have developed a plan for the transfer of credits between the North Carolina institutions of higher education; and

Whereas, the General Assembly continues to be interested in the progress being made towards increasing the number of credits that will transfer and improving the quality of academic advising available to students regarding the transfer of credits; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall develop a plan to provide students with accurate and understandable information regarding the transfer of credits between community colleges and between community colleges and the constituent institutions of The University of North Carolina. The plan shall include provisions to increase the adequacy and availability of academic counseling for students who are considering a college transfer program. The Board of Governors and the State Board of Community Colleges shall report on the implementation of this plan to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997.

Sec. 2. The Board of Governors and the State Board of Community Colleges shall establish a timetable for the development of guidelines and transfer agreements for program majors, professional specializations, and associate in applied science degrees. The Board of Governors and the State Board of Community Colleges shall submit the timetable and report on its implementation to the General Assembly and the Joint Legislative Education Oversight Committee by January 15, 1997.

Sec. 3. The State Board of Community Colleges shall review its policies and rules and make any changes in them that are necessary to implement the plan for the transfer of credits, including policies and rules regarding the common course numbering system, common course library, reengineering initiative, and the systemwide conversion to a semester-based academic year. The necessary changes shall be made in order to ensure full implementation by September 1, 1997.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1217

CHAPTER 626

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE BLUE RIBBON STUDY COMMISSION ON AGRICULTURAL WASTE.

*The General Assembly of North Carolina enacts:***PART I. PERMITS/OPERATIONS REVIEWS/INSPECTIONS/FEES FOR ANIMAL****WASTE MANAGEMENT SYSTEMS FOR ANIMAL OPERATIONS**

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Animal Waste Management Systems.

"§ 143-215.10A. Legislative findings and intent.

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water Conservation. Permitting, inspection, and enforcement will be vested in the Division of Environmental Management.

"§ 143-215.10B. Definitions.

As used in this Part:

- (1) 'Animal operation' means any agricultural farming activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system. Public livestock markets or sales regulated under Articles 35 and 35A of Chapter 106 of the General Statutes shall not be considered animal operations for purposes of this Part.
- (2) 'Animal waste' means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.
- (3) 'Animal waste management system' means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.
- (4) 'Division' means the Division of Environmental Management of the Department.
- (5) 'Feedlot' means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where

the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

- (6) 'Technical specialist' means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans.

"§ 143-215.10C. Applications and permits.

(a) No person shall construct or operate an animal waste management system for an animal operation without first obtaining a permit under this Part. The Commission shall develop a system of general permits for animal operations based on species, number of animals, and other relevant factors.

(b) An animal waste management system shall be designed, constructed, and operated so that the animal operation served by the animal waste management system does not cause pollution in the waters of the State except as may result because of rainfall from a storm event more severe than the 25-year, 24-hour storm.

(c) The Commission shall act on a permit application as quickly as possible and may conduct any inquiry or investigation it considers necessary before acting on an application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.

(d) All applications for permits or for renewal of an existing permit shall be in writing, and the Commission may prescribe the form of the applications. All applications shall include an animal waste management system plan approved by a technical specialist. The Commission may require an applicant to submit additional information the Commission considers necessary to evaluate the application. Permits and renewals issued pursuant to this section shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission.

(e) Animal waste management plans shall include all of the following components:

- (1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.
- (2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.
- (3) Provisions that set forth acceptable methods of disposing of mortalities.
- (4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.
- (5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.

- (6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be the rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
- (7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.
- (8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) Any operator of an animal operation with a dry litter animal waste management system involving 30,000 or more birds shall develop an animal waste management plan that complies with the testing and record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this section. Any operator of this type of animal waste management system shall retain records required under this section and by the Department on-site for three years.

(g) The Commission shall encourage the development of alternative and innovative animal waste management technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the timely evaluation of alternative and innovative animal waste management technologies and shall encourage operators of animal waste management systems to participate in the evaluation of these technologies. The Commission shall provide sufficient flexibility in the regulatory process to allow for the prompt implementation of alternative and innovative animal waste management technologies that are demonstrated to provide improved protection to public health and the environment.

"§ 143-215.10D. Operations review.

(a) The Division, in cooperation with the Division of Soil and Water Conservation, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a

violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the Department, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation.

"§ 143-215.10E. Violations requiring immediate notification.

(a) Any employee of a State agency or unit of local government lawfully on the premises and engaged in activities relating to the animal operation who observes any of the following violations shall immediately notify the owner or operator of the animal operation and the Division:

- (1) Any direct discharge of animal waste into the waters of the State.
- (2) Any deterioration or leak in a lagoon system that poses an immediate threat to the environment.
- (3) Failure to maintain adequate storage capacity in a lagoon that poses an immediate threat to public health or the environment.
- (4) Overspraying animal waste either in excess of the limits set out in the animal waste management plan or where runoff enters waters of the State.
- (5) Any discharge that bypasses a lagoon system.

(b) Any employee of a federal agency lawfully on the premises and engaged in activities relating to the animal operation who observes any of the above violations is encouraged to immediately notify the Division.

"§ 143-215.10F. Inspections.

The Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

"§ 143-215.10G. Fees for animal waste management systems.

The Department shall charge an annual permit fee of all animal operations that are subject to a permit under G.S. 143-215.10C for animal waste management systems according to the following schedule:

- (1) For a system with a design capacity of 38,500 or more and less than 100,000 pounds steady state live weight, fifty dollars (\$50.00).
- (2) For a system with a design capacity of 100,000 or more and less than 800,000 pounds steady state live weight, one hundred dollars (\$100.00).
- (3) For a system with a design capacity of 800,000 pounds or more state live weight, two hundred dollars (\$200.00)."

Sec. 2. G.S. 143-215.1(a) reads as rewritten:

"(a) Activities for Which Permits Required. -- No person shall do any of the following things or carry out any of the following activities ~~until or unless such that person shall have applied for and shall have~~ has received a permit from the Commission a permit therefor and shall have and has ~~complied with such conditions, if any, as are prescribed by such all~~ conditions set forth in the permit:

- (1) Make any outlets into the waters of the State; State.
- (2) Construct or operate any sewer system, treatment works, or disposal system within the State; State.
- (3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State; State.
- (4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which that would result in any violation of the effluent standards or limitations established for any point source or which that would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water; applicable standard.
- (5) Change the nature of the waste discharged through any disposal system in any way which that would exceed the effluent standards or limitations established for any point source or which that would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters; applicable standards.
- (6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article; Article.
- (7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility; that facility.
- (8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities; facility.
- (9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto; thereto.

- (10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or ~~animals~~; animals.
- (11) Cause or permit discharges regulated under G.S. 143-214.7 ~~which that~~ result in water pollution.
- (12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) ~~In connection with the above, no such~~ No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency ~~which that~~ administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that ~~such any outlet for the disposal of waste is is, or would be,~~ sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) ~~In any case where the Commission denies a permit, it~~ If the Commission denies an application for a permit, the Commission shall state in writing the reason for such the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans which will that would be required in order that the applicant may obtain a permit."

PART II. SPECIAL ORDERS OF CONSENT/PENALTIES

Sec. 3. G.S. 143-215.2(a) reads as rewritten:

"(a) Issuance. -- The Commission ~~is hereby empowered, may,~~ after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, ~~to issue (and issue, and from time to time to modify or revoke)~~ modify or revoke, a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. ~~Such an~~ The order or instrument may direct ~~such the~~ person to take, or refrain from taking ~~such an~~ a action, or to achieve ~~such results,~~ a result, within a period of time specified by ~~such the~~ special order, as the Commission deems necessary and feasible in order to alleviate or eliminate ~~such the~~ pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and ~~such the~~ consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission

issued pursuant to hearing. ~~Provided, however, that the provisions of this section shall not apply to any agricultural operation, such as the use or preparation of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agricultural products, or raising livestock or poultry."~~

Sec. 4. G.S. 143-215(e) reads as rewritten:

"(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Secretary shall have the authority to assess fines and penalties not to exceed ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection."

PART III. CERTIFICATION/TRAINING OF ANIMAL WASTE MANAGEMENT SYSTEM OPERATORS

Sec. 5. G.S. 143B-301(a) reads as rewritten:

"(a) The Water Pollution Control System Operators Certification Commission shall consist of 11 members. Two members shall be from the animal agriculture industry and shall be appointed by the Commissioner of Agriculture. ~~nine~~ Nine members shall be appointed by the Secretary of Environment, Health, and Natural Resources with the approval of the Environmental Management Commission with the following qualifications:

- (1) Two members shall be currently employed as water pollution control facility operators, water pollution control system superintendents or directors, water and sewer superintendents or directors, or equivalent positions with a North Carolina municipality;
- (2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
- (3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;
- (4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;
- (5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment;
- (6) One member who is employed by the Department of Environment, Health, and Natural Resources and works in the field of water pollution control, who shall serve as Chairman of the Commission;
- (7) One member who is employed by a commercial water pollution control system operating firm; and
- (8) One member shall be currently employed as a water pollution control system collection operator, superintendent, director, or equivalent position with a North Carolina municipality."

Sec. 6. (a) The title of Article 3 of Chapter 90A reads as rewritten:

"ARTICLE 3.Certification of Water Pollution Control System Operators,
Operators and Animal Waste Management System Operators.Part 1. Certification of Water Pollution Control System Operators."

(b) Article 3 of Chapter 90A of the General Statutes, as amended by subsection (a) of this section, is amended by adding a new Part to read:

"Part 2. Certification of Animal Waste Management System Operators."§ 90A-47. Purpose.

The purpose of this Part is to reduce nonpoint source pollution in order to protect the public health and to conserve and protect the quality of the State's water resources, to encourage the development and improvement of the State's agricultural land for the production of food and other agricultural products, and to require the examination of animal waste management system operators and certification of their competency to operate or supervise the operation of those systems.

"§ 90A-47.1. Definitions.

(a) As used in this Part:

- (1) 'Animal waste' means liquid residuals resulting from an animal operation that are collected, treated, stored, or applied to the land through an animal waste management system.
- (2) 'Application' means laying, spreading on, irrigating, or injecting animal waste onto land.
- (3) 'Commission' means the Water Pollution Control System Operators Certification Commission.
- (4) 'Owner' means the person who owns or controls the land used for agricultural purposes or the person's lessee or designee.
- (5) 'Operator in charge' means a person who holds a currently valid certificate to operate an animal waste management system and who has primary responsibility for the operation of the system.

(b) The definitions set out in G.S. 143-215.10B, other than the definition of 'animal waste', apply to this Part.

"§ 90A-47.2. Certified operator in charge required; qualifications for certification.

(a) No owner or other person in control of an animal operation having an animal waste management system shall allow the system to be operated by a person who does not hold a valid certificate as an operator in charge of an animal waste management system issued by the Commission. No person shall perform the duties of an operator in charge of an animal waste management system without being certified under the provisions of this Part. Other persons may assist in the operation of an animal waste management system so long as they are directly supervised by an operator in charge who is certified under this Part.

(b) The owner or other person in control of an animal operation may contract with a certified animal waste management system operator in charge to provide for the operation of the animal waste management system at that animal operation. The Commission may adopt rules requiring that any certified animal waste management system operator in charge who contracts with one or more owners or other persons in control of an animal operation

file an annual report with the Commission as to the operation of each system at which the services of the operator in charge are provided.

"§ 90A-47.3. Qualifications for certification; training; examination.

(a) The Commission shall develop and administer a certification program for animal waste management system operators in charge that provides for receipt of applications, training and examination of applicants, and investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Environmental Management of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate.

"§ 90A-47.4. Fees; certificate renewals.

(a) An applicant for certification under this Part shall pay a fee of ten dollars (\$10.00) for the examination and the certificate.

(b) The certificate shall be renewed annually upon payment of a renewal fee of ten dollars (\$10.00). A certificate holder who fails to renew the certificate and pay the renewal fee within 30 days of its expiration shall be required to take and pass the examination for certification in order to renew the certificate.

"§ 90A-47.5. Suspension; revocation of certificate.

(a) The Commission, in accordance with the provisions of Chapter 150B of the General Statutes, may suspend or revoke the certificate of any operator in charge who:

- (1) Engages in fraud or deceit in obtaining certification.
- (2) Fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an operator in charge.
- (3) Is incompetent or otherwise unable to properly perform the duties of an operator in charge.

(b) In addition to revocation of a certificate, the Commission may levy a civil penalty, not to exceed one thousand dollars (\$1,000) per violation, for willful violation of the requirements of this Part.

"§ 90A-47.6. Rules.

The Commission shall adopt rules to implement the provisions of this Part."

PART IV. SWINE FARM SITING ACT/REQUIREMENTS/NOTICE

Sec. 7. (a) Article 67 of Chapter 106 of the General Statutes reads as rewritten:

"ARTICLE 67.

"Swine Farms.

"§ 106-800. *Title.*

This Article shall be known as the 'Swine Farm Siting Act'.

"§ 106-801. *Purpose.*

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for larger swine farms can assist in the development of pork production to contribute production, which contributes to the economic development of the State while minimizing any State, by lessening the interference with the use and enjoyment of adjoining property.

"§ 106-802. *Definitions.*

As used in this Article, unless the context clearly requires otherwise:

- (1) 'Lagoon' means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials ~~without discharge to surface waters of the State except in the event of a storm more severe than the 25-year, 24 hour storm materials.~~
- (2) ~~'New swine farm' means any swine farm whose operations were sited on or after October 1, 1995. Renovation and reconstruction of existing farms does not constitute a 'new swine farm'.~~
- (3) 'Occupied residence' means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.
- (4) ~~'Siting' or 'site~~ 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Natural Resources Conservation Service Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission and either of which ~~report provides the basis for certification by the Division of Environmental Management pursuant to the rules appearing in the North Carolina Administrative Code governing waste not discharged to surface waters. Commission.~~
- (5) 'Swine farm' means a tract of land devoted to raising 250 or more animals of the porcine species.
- (6) 'Swine house' means a building that shelters porcine animals on a continuous basis.

~~"§ 106-803. *Requirements*~~ Siting requirements for siting swine houses and lagoons, houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be located at least 1,500 feet from any occupied residence; at least 2,500 feet from any school, hospital, or church; and at least ~~100~~ 500 feet from any property boundary. The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 50 feet from any ~~residential property boundary~~ boundary of property on which an occupied residence is located and from any perennial stream or river, other than an irrigation ditch or canal.

(b) A swine house or a lagoon that is a component of a swine farm may be sited located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds.

"§ 106-804. Enforcement.

(a) Any person owning property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against a swine farmer who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.

(2) An order enforcing the siting requirements under G.S. 106-803.

(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person owns:

(1) An occupied residence located less than 1,500 feet from a swine house or lagoon in violation of G.S. 106-803.

(2) A school, hospital, or church located less than 2,500 feet from a swine house or lagoon in violation of G.S. 106-803.

(3) Property whose boundary is located less than 500 feet from a swine house or lagoon in violation of G.S. 106-803.

(4) Property on which an occupied residence is located and whose boundary is less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.

(5) Property that abuts a perennial stream or river, or on which a perennial stream or river is located, and that property and that perennial stream or river are less than 50 feet from the outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm in violation of G.S. 106-803.

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys' fees and expert witnesses' fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief.

"§ 106-805. Written notice of swine farms.

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, attempt to notify all adjoining property owners and all property owners who own property located across a public road, street, or highway from the swine farm of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

- (1) The name and address of the person intending to construct a swine farm.
- (2) The type of swine farm and the design capacity of the animal waste management system.
- (3) The name and address of the technical specialist preparing the waste management plan.
- (4) The address of the local Soil and Water Conservation District office.
- (5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Environmental Management, Department of Environment, Health, and Natural Resources."

(b) Subsection (a) of this section does not repeal any rule that does not conflict with the amendments to Article 67 of Chapter 106 of the General Statutes made by subsection (a) of this section.

Sec. 8. Section 2 of Chapter 420 of the 1995 Session Laws reads as rewritten:

~~"Sec. 2. This act becomes effective October 1, 1995, and applies to any new swine farm for which a site evaluation is conducted on or after that date. This act applies to the construction or enlargement, on or after October 1, 1995, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. This act does not apply under each of the following circumstances:~~

- (1) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995.
- (2) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995, or as that system is set forth in an animal waste management plan approved before October 1, 1995.
- (3) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population."

PART V. AGRICULTURAL COST SHARE PROGRAM

Sec. 9. G.S. 143-215.74(b)(5) reads as rewritten:

- "(5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian

buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste ~~managements~~ management systems and application. Funding for animal waste management shall be allocated for practices in river basins such that the funds will have the greatest impact in improving water quality."

Sec. 10. G.S. 143-215.74(b)(6) reads as rewritten:

- "(6) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost (which may include in-kind support) with a maximum of ~~fifteen thousand dollars (\$15,000) per year~~ seventy-five thousand dollars (\$75,000) per year to each applicant."

PART VI. REPORTS/DEVELOPMENT OF COMPREHENSIVE PLAN/STUDIES

Sec. 11. (a) The Division of Soil and Water Conservation of the Department of Environment, Health, and Natural Resources, the Cooperative Extension Service of North Carolina State University, and the North Carolina Department of Agriculture shall prepare a coordinated and comprehensive plan that includes use of existing resources at the local level for nonpoint source pollution prevention and control. The plan shall include mechanisms to be utilized that enhance communication, and provide information, technical assistance, and environmental education. The plan shall also include the following:

- (1) Designate the Division of Soil and Water Conservation of the Department of Environment, Health, and Natural Resources as the lead agency with a defined line of authority for agricultural activities affected by the nonpoint source pollution prevention/control plan.
- (2) Identify the needs of agricultural crop and livestock operations and the services provided by the various groups.
- (3) Develop a strategic plan for interaction and communication with farmers and livestock operations concerning implementation of agricultural best management practices including nutrient management plans and site-specific nutrient reduction efforts.

(b) The Commissioner of Agriculture, the Secretary of Environment, Health, and Natural Resources, and the Director of the Cooperative Extension Service shall report their comprehensive plan to the Senate Select Committee on River Water Quality and Fish Kills and the Environmental Review Commission by September 30, 1996.

Sec. 12. The Environmental Review Commission shall evaluate the animal waste permitting, inspection, and enforcement program established under Section 1 of this act including, whether to transfer responsibility for permitting, compliance inspections, and enforcement to the Division of Soil and Water Conservation. The Commission may report its findings and recommendations to the General Assembly on or before the first day of the 1997 Regular Session and shall report its findings and recommendations on or before the first day of the 1998 Regular Session.

Sec. 13. Part 9A of Article 21 of Chapter 143 of the General Statutes is repealed effective January 1, 1997. A person certified under Part 9A of Article 21 of Chapter 143 of the General Statutes shall be certified as an animal waste management system operator by the Water Pollution Control System Operators Certification Commission without additional preexamination training, examination, or payment of an initial certification fee. A person certified under Part 9A of Article 21 of Chapter 143 of the General Statutes shall complete approved additional training and pay the annual renewal fee in order to maintain certification.

Sec. 14. (a) All operators of animal waste management systems, as defined in G.S. 143-215.10B, as enacted by Section 1 of this act, shall register with their local Soil and Water Conservation District office and initiate the process to obtain an approved animal waste management plan pursuant to 15A N.C.A.C. 2H.0217. Operators who initiate the process of obtaining an approved animal waste management plan before 1 September 1996 shall receive priority for inclusion in the Nonpoint Source Pollution Control Program pursuant to G.S. 143-215.74, et seq., including priority for technical assistance and State funding.

(b) The Environmental Management Commission may enter into a special agreement with an operator who registers by 1 September 1996 under subsection (a) of this section and who makes a good faith effort to obtain an approved animal waste management plan by 31 December 1997. The special agreement shall set forth a schedule for the operator to follow to obtain an approved animal waste management plan by a date certain and shall provide that the Environmental Management Commission shall not issue a notice of violation for failure to have an approved animal waste management plan so long as the operator complies with the special agreement.

(c) The Environmental Management Commission shall strictly enforce the penalties available against those operators who fail to comply with subsection (a) of this section or otherwise fail to make a good faith effort to obtain an approved animal waste management plan by 31 December 1997.

(d) The board of each Soil and Water Conservation District shall develop a strategy to assist operators of animal waste management systems in its district to obtain approved animal waste management plans by 31 December 1997.

Sec. 15. The Environmental Management Commission shall develop a definition for the term "chronic rainfall". The Commission shall review the meaning of "no discharge of pollutants" as used in the definition of "animal waste management system" in its animal waste management rules to determine whether this phrase constitutes a no discharge requirement and whether this phrase creates a performance standard or a technology standard. The Commission shall clarify the meaning of "no discharge" such that the no discharge requirement for animal waste management systems is economically practical and technologically achievable. The Commission shall complete the requirements of this section by 1 October 1996.

Sec. 16. No later than September 1, 1996, the Soil and Water Conservation Commission shall specify odor control best management

practices, insect control best management practices, and best management practices for riparian buffers or equivalent controls consistent with the provisions of G.S. 143-215.10C(e)(1), (2), and (4), as enacted by Section 1 of this act.

Sec. 17. No later than October 1, 1996, the Environmental Management Commission and the Soil and Water Conservation Commission, with technical assistance from the Cooperative Extension Service, shall establish the record-keeping requirements under G.S. 143-215.1C(e)(8), as enacted by Section 2 of this act. The Natural Resources Conservation Service is encouraged to cooperate fully with establishing these requirements.

Sec. 18. (a) An interagency group is created to:

- (1) Address questions from technical specialists and provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules.
- (2) Publish its decisions on these questions on a regular and recurring basis.
- (3) Provide uniform strategies for operators of intensive livestock operations to meet the December 31, 1997, deadline to obtain an approved animal waste management plan.
- (4) Develop, no later than August 1, 1996, a standard for the use of riparian buffers or equivalent controls as best management practices, particularly along perennial streams; decide whether a uniform State standard, a uniform basinwide standard, or a site-specific standard best protects water quality; and submit the standard that the group decides upon to the Soil and Water Conservation Commission for adoption in developing best management practices for riparian buffers and equivalent controls under Section 6 of this act.

(b) The interagency group shall consist of two representatives from each of the following State agencies: the Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources; the Division of Environmental Management, Department of Environment, Health, and Natural Resources; the Department of Agriculture; and the Cooperative Extension Service. The General Assembly encourages the Natural Resources Conservation Service, United States Department of Agriculture, to provide two representatives from its agency to participate fully as members of the interagency group. The interagency group shall remain in existence until such time after December 31, 1997, that the Secretary of Environment, Health, and Natural Resources determines the interagency group is no longer needed to resolve issues related to certifying animal waste management plans.

PART VII. EFFECTIVE DATES/MISCELLANEOUS PROVISIONS

Sec. 19. (a) G.S. 143-215.10A, as enacted by Section 1 of this act, is effective upon ratification.

(b) G.S. 143-215.10B, as enacted by Section 1 of this act, is effective upon ratification.

(c)(1) G.S. 143-215.10C, as enacted by Section 1 of this act, becomes effective January 1, 1997. In order to ensure an

orderly and cost-effective phase-in of the permit program, the Department of Environment, Health, and Natural Resources shall issue permits for animal operations over a five-year period. The Department shall issue permits for approximately twenty percent (20%) of the animal waste management facilities that are in operation on January 1, 1997, during each of the five calendar years beginning January 1, 1997, and shall give priority to those animal waste management systems serving the largest animal operations. An animal waste management system that is deemed permitted by rule on January 1, 1997, under 15A N.C.A.C. 2H.0217 may continue to operate on a deemed permitted basis as provided in subsection (b) of this section.

- (2) In accordance with its phase-in schedule, the Department shall notify each owner or operator of an animal waste management system that is deemed permitted of the date by which an application for a permit for that animal waste management system shall be submitted by certified mail. An owner or operator of an animal waste management system who fails to submit an application for a permit by the date specified by the Department shall not operate the animal waste management system after that date. An animal waste management system that is authorized to continue operation under this section and for which a timely application for a permit is submitted may continue to operate on a deemed permitted basis until the Department either issues a permit or notifies the owner or operator that the application for a permit is denied. An animal waste management system that is deemed permitted shall be subject to the annual operational review and annual inspection requirements as though it were permitted.
- (3) The Department shall act on an application for a permit for a new facility or for the expansion of an existing facility within 90 days after the Department receives the application.
- (4) Notwithstanding G.S. 143-215.10C (a) through (d), a dry litter animal waste management system involving 30,000 or more birds shall continue to operate on a deemed permitted basis by rule under 15A N.C.A.C. 2H.0217 and shall comply with the animal waste management plan testing and record-keeping requirements by January 1, 1998.

(d) G.S. 143-215.10D, as enacted by Section 1 of this act, becomes effective September 1, 1996.

(e) G.S. 143-215.10E, as enacted by Section 1 of this act, is effective upon ratification.

(f) G.S. 143-215.10F, as enacted by Section 1 of this act, becomes effective January 1, 1997.

(g) G.S. 143-215.10G, as enacted by Section 1 of this act, becomes effective January 1, 1997.

Sec. 20. Section 2 of this act becomes effective January 1, 1997.

Sec. 21. Sections 3 and 4 of this act are effective upon ratification and apply to violations that occur on or after that date.

Sec. 22. Section 5 of this act becomes effective October 1, 1996. In order to maintain staggered terms on the Water Pollution Control System Operator Certification Commission, of the two new members added to the Commission by Section 5 of this act, the initial term of one appointee shall expire on 30 June 1998 and the initial term of the other appointee shall expire on 30 June 1999.

Sec. 23. Section 6 of this act is effective upon ratification, except that G.S. 90A-47.2(a), as enacted by subsection (b) of Section 6 of this act, becomes effective January 1, 1997.

Sec. 24. Sections 7 and 8 of this act are effective upon ratification, except that the change from 100 to 500 feet made in G.S. 106-803(a) by Section 7 of this act does not apply to a swine farm for which a site evaluation was conducted prior to October 1, 1996.

Sec. 25. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission, the Soil and Water Conservation Commission, and the Water Pollution Control System Operators Certification Commission, may adopt temporary rules to implement this act.

Sec. 26. Sections 9 through 26 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1080

CHAPTER 627

AN ACT TO MAKE FOX HUNTING IN CURRITUCK COUNTY CONSISTENT WITH THE REGULATIONS OF THE WILDLIFE RESOURCES COMMISSION BY REPEALING THE LAW AUTHORIZING FOX HUNTING IN CERTAIN PORTIONS OF CURRITUCK COUNTY AT ALL TIMES OF THE YEAR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 545 of the 1959 Session Laws is repealed.

Sec. 2. G.S. 113-133(e) is amended by deleting the words "Currituck: Session Laws 1959, Chapter 545."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1270

CHAPTER 628

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF POWELL ROAD IN CRAVEN COUNTY AND TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF PUBLIC ROADS IN NORTHAMPTON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird on, from, or across the right-of-way of Powell Road (State Road 1477) in Craven County.

Sec. 2. It is unlawful to hunt, take, or kill any wild animal or wild bird with a firearm on, from, or across the right-of-way of any public road or highway in Northampton County.

Sec. 3. Violation of this act is a Class 3 misdemeanor.

Sec. 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs and by other peace officers with general subject matter jurisdiction.

Sec. 5. This act becomes effective December 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1372

CHAPTER 629

AN ACT TO CONFIRM THAT STANLY COUNTY MAY PURCHASE AND CONVEY PROPERTY TO THE STATE OF NORTH CAROLINA FOR USE AS A CORRECTIONAL FACILITY AND TO DELAY THE EFFECTIVE DATE OF THE LAW REQUIRING THE REGISTER OF DEEDS TO COMPLY WITH MINIMUM INDEXING STANDARDS FOR LAND RECORDS MANAGEMENT IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The County of Stanly has power under general law to acquire real and personal property and convey it to the State under G.S. 160A-274 or other applicable law for use as a correctional facility.

Sec. 2. Section 3 of Chapter 697 of the 1991 Session Laws, as amended by Section 3 of Chapter 178 of the 1993 Session Laws, reads as rewritten:

"Sec. 3. Section 2 of this act becomes effective January 1, ~~1995~~, 1999. The remainder of this act is effective upon ratification."

Sec. 3. Section 2 of this act applies only to Brunswick County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1376

CHAPTER 630

AN ACT TO REMOVE THE BAG LIMITS ON THE TRAPPING OF RACCOONS IN BEAUFORT, HYDE, AND PAMLICO COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 113-291.2, there shall be no bag limits on the trapping of raccoons.

Sec. 2. This act applies only to Beaufort, Hyde, and Pamlico Counties.

Sec. 3. This act is effective upon ratification and expires June 30, 1998.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1100

CHAPTER 631

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE SCHOOL CAPITAL CONSTRUCTION STUDY COMMISSION TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO PROVIDE FUNDS FOR GRANTS TO COUNTIES FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS, IN ORDER TO PROMOTE EQUITY IN LOCAL SCHOOL FACILITIES ACROSS THE STATE AND TO ENABLE LOCAL GOVERNMENTS TO GIVE LOCAL PROPERTY TAX RELIEF, AND TO ENSURE THAT CERTAIN GRANTS FOR SCHOOL FACILITY NEEDS CONTINUE TO BE MADE IN ACCORDANCE WITH THE 1988 PRIORITY LIST.

The General Assembly of North Carolina enacts:

Section 1. Short Title. -- This act shall be known and may be cited as the "Public School Building Bond Act of 1996".

Sec. 2. Purpose. -- It is the intent of the General Assembly by this act to provide for the issuance of one billion eight hundred million dollars (\$1,800,000,000) general obligation bonds of the State to facilitate the providing of public school buildings by making grants to counties to provide funds for public school capital outlay projects.

Sec. 3. Definitions. -- As used in this act, unless the context otherwise requires:

- (1) "Bonds" means bonds issued under this act.
- (2) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of public school capital outlay projects authorized by this act:
 - a. The cost of constructing, reconstructing, enlarging, acquiring, and improving projects, and acquiring equipment and land therefor,
 - b. The cost of engineering, architectural, and other consulting services as may be required,
 - c. Administrative expenses and charges,
 - d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,
 - e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,
 - f. The cost of reimbursing the State for any payments made for any cost described above, and

- g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

- (3) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.
- (4) "Notes" means notes issued under this act.
- (5) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
- A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
 - A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.
- (6) "Public School Capital Outlay Projects" means the construction of new public school buildings or the renovation of existing public school buildings, the purchase of equipment for a newly constructed public school building or equipment related to the improvement of an existing public school building, the purchase of land necessary for immediate construction of school buildings, and other related capital outlay projects constituting facilities for individual schools that are used for instructional and related purposes, but not including centralized administration, maintenance, trailers, relocatable classrooms, or mobile classrooms.
- (7) "State" means the State of North Carolina.

Sec. 4. Authorization of Bonds and Notes. -- Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Public School Building Bonds in the election held as provided in this act, the State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Public School Building Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in the aggregate principal amount not exceeding one billion eight hundred million dollars (\$1,800,000,000) for the purposes authorized in this act. The principal amounts of bonds or notes issued in any 12-month period shall not exceed four hundred fifty million dollars (\$450,000,000). In determining whether this limit has been reached, the issuance of a note or bond to pay an outstanding note is not considered an issuance.

Sec. 5. Uses of Bond and Note Proceeds. -- The proceeds of Public School Building Bonds and notes shall be used for the purpose of making grants to counties for paying the cost of public school capital outlay projects.

Any additional moneys that may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any public school capital outlay projects authorized by this act may be placed by the State Treasurer in the Public School Building Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Public School Building Bonds Fund or in any separate fund or account may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury except with respect to grant money to the extent otherwise directed by the terms of the grant, and any investment earnings shall be credited to the Public School Building Bonds Fund or the particular fund or account from which the investment was made.

All moneys deposited in, or accruing to the credit of, the Public School Building Bonds Fund, other than moneys set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and cost of issuance, shall be used to pay the cost of public school capital outlay projects in the manner authorized by this act.

The proceeds of Public School Building Bonds and notes may be used with any other moneys made available by the General Assembly for public school capital outlay projects, including the proceeds of any other State bond issues, whether heretofore made available or that may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Public School Building Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for public school capital outlay projects shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by

the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The Director of the Budget shall provide quarterly reports to the State Board of Education, the Superintendent of Public Instruction, and the General Assembly on the expenditure of moneys from the Public School Building Bonds Fund. Reports to the General Assembly shall be filed with the Legislative Library, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Fiscal Research Division.

Sec. 6. (a) Allocation of Proceeds. -- The proceeds of Public School Building Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Public School Building Bonds Fund". Moneys in the Public School Building Bonds Fund shall be used for the purposes set forth in this act. The proceeds of Public School Building Bonds and notes shall be allocated to counties and expended for paying the cost of public school capital outlay projects, to the extent and as provided in this act and subject to change as provided in this act.

(b) Small county school system allocation. -- The State Board of Education shall allocate the proceeds of thirty million dollars (\$30,000,000) Public School Building Bonds and notes as grants to counties that have a small county school system, after considering whether the counties demonstrate both greater than average school construction needs and high property tax rates. A "small county school system" is a school system who was entitled to receive small school system supplemental funding under section 17.2 of Chapter 507 of the 1995 Session Laws, known as The Expansion and Capital Improvements Act of 1995.

(c) Primary allocation. -- The proceeds of one billion seven hundred seventy million dollars (\$1,770,000,000) Public School Building Bonds and notes shall be allocated to each county on the basis of the distribution amounts provided in the following table for the local school administrative units in the State. In the case of a local school administrative unit located entirely in one county, the unit's total distribution amount shall be allocated to that county. In the case of a local school administrative unit located in more than one county, the unit's distribution amount shall be allocated among the counties in which the unit is located in proportion to average daily membership of the unit in each county. A unit's distribution amount allocated to a county may be used only with respect to public school facilities of that unit.

Local School Administrative Unit	Distribution Based on High Growth	Distribution Based on Ability to Pay	Distribution Based on Average Daily Membership	Total
Alamance Co.	\$8,084,430	\$0	\$11,080,174	\$19,164,604
Alexander Co.	1,216,676	4,941,875	2,995,962	9,154,513
Alleghany Co.	0	175,362	865,997	1,041,359

Anson Co.	0	6,981,548	2,612,710	9,594,258
Ashe Co.	0	2,134,326	2,045,190	4,179,516
Avery Co.	0	0	1,422,920	1,422,920
Beaufort Co.	0	7,070,465	4,514,843	11,585,308
Bertie Co.	0	8,211,510	2,324,829	10,536,339
Bladen Co.	245,118	7,579,706	3,315,045	11,139,869
Brunswick Co.	2,321,934	0	5,535,672	7,857,606
Buncombe Co.	7,723,439	0	14,461,155	22,184,594
Asheville City	365,448	0	2,736,340	3,101,788
Burke Co.	5,610,969	11,153,769	8,017,098	24,781,837
Cabarrus Co.	13,049,180	0	9,724,956	22,774,136
Kannapolis City	0	467,915	2,374,281	2,842,196
Caldwell Co.	2,558,138	10,265,914	7,055,141	19,879,193
Camden Co.	352,078	2,160,704	711,754	3,224,537
Carteret Co.	1,947,572	0	4,972,273	6,919,845
Caswell Co.	227,291	5,725,252	2,055,198	8,007,741
Catawba Co.	7,032,652	0	8,559,304	15,591,956
Hickory City	784,377	0	2,533,234	3,317,610
Newton City	0	0	1,620,728	1,620,728
Chatham Co.	3,458,389	0	4,010,315	7,468,705
Cherokee Co.	44,567	4,476,625	2,054,610	6,575,801
Chowan Co.	0	3,147,395	1,530,066	4,677,461
Clay Co.	173,811	828,575	729,416	1,731,802
Cleveland Co.	2,740,863	5,485,707	5,219,533	13,446,102
Kings Mtn. City	1,149,825	2,527,920	2,464,354	6,142,100
Shelby City	864,597	2,073,363	2,009,867	4,947,828
Columbus Co.	0	12,395,869	4,506,012	16,901,881
Whiteville City	0	4,539,719	1,640,744	6,180,463
Craven Co.	539,259	12,666,532	8,751,224	21,957,016
Cumberland Co.	21,530,255	21,491,991	30,284,593	73,306,839
Currituck Co.	1,243,416	0	1,759,076	3,002,491
Dare Co.	3,324,689	0	2,559,137	5,883,825
Davidson Co.	5,330,198	6,774,659	10,606,260	22,711,117
Lexington City	668,503	1,167,549	1,827,366	3,663,419
Thomasville City	690,786	832,854	1,299,879	2,823,520
Davie Co.	1,301,353	0	2,911,188	4,212,540
Duplin Co.	1,778,218	11,475,816	4,931,652	18,185,686
Durham Co.	5,379,221	0	17,059,147	22,438,368
Edgecombe Co.	0	9,341,292	4,682,626	14,023,918
Forsyth Co.	16,561,049	0	24,585,259	41,146,308
Franklin Co.	3,275,665	10,121,787	4,047,993	17,445,446
Gaston Co.	2,433,351	0	17,544,835	19,978,187
Gates Co.	1,154,282	3,704,201	1,159,765	6,018,248
Graham Co.	0	2,154,379	726,472	2,880,852
Granville Co.	3,445,019	9,667,973	4,335,874	17,448,866
Greene Co.	503,606	4,127,357	1,679,599	6,310,562
Guilford Co.	22,657,797	0	34,566,305	57,224,102
Halifax Co.	0	10,065,828	3,723,023	13,788,852
Roanoke Rapids	1,368,203	5,067,206	1,894,480	8,329,888

Weldon City	276,315	1,979,352	744,134	2,999,801
Harnett Co.	9,777,971	24,759,550	8,448,037	42,985,558
Haywood Co.	1,648,974	1,522,867	4,418,294	7,590,135
Henderson Co.	4,492,341	0	6,562,388	11,054,728
Hertford Co.	0	8,502,768	2,514,395	11,017,162
Hoke Co.	3,231,098	14,748,672	3,445,739	21,425,510
Hyde Co.	0	0	1,000,000	1,000,000
Iredell Co.	6,007,614	0	8,590,505	14,598,119
Mooreville City	2,081,273	0	2,012,811	4,094,084
Jackson Co.	378,818	0	2,098,763	2,477,582
Johnston Co.	11,279,875	17,733,652	10,319,556	39,333,083
Jones Co.	49,024	1,548,899	924,280	2,522,202
Lee Co.	2,589,335	931,071	4,953,434	8,473,841
Lenoir Co.	0	7,202,394	6,167,361	13,369,755
Lincoln Co.	4,550,277	3,281,461	5,750,552	13,582,290
Macon Co.	1,555,384	0	2,263,603	3,818,987
Madison Co.	289,685	3,244,452	1,534,187	5,068,323
Martin Co.	365,448	5,532,445	2,947,688	8,845,581
McDowell Co.	0	7,226,827	3,628,829	10,855,656
Mecklenburg Co.	65,228,072	0	54,601,986	119,830,058
Mitchell Co.	0	2,332,411	1,387,597	3,720,009
Montgomery Co.	766,550	5,188,325	2,551,484	8,506,359
Moore Co.	4,452,230	0	6,160,297	10,612,527
Nash Co.	3,690,137	14,725,007	10,539,735	28,954,879
New Hanover Co.	7,830,399	0	12,515,457	20,345,856
Northampton Co.	160,441	7,155,039	2,244,764	9,560,244
Onslow Co.	5,673,363	38,447,459	12,123,374	56,244,195
Orange Co.	2,571,508	0	3,408,650	5,980,159
Chapel Hill- Carrboro	6,172,512	0	4,823,329	10,995,840
Pamlico Co.	57,937	2,360,084	1,229,822	3,647,844
Pasquotank Co.	1,439,510	8,125,362	3,681,225	13,246,097
Pender Co.	3,890,688	5,690,671	3,502,844	13,084,204
Perquimans Co.	17,827	2,984,367	1,130,918	4,133,112
Person Co.	1,586,581	829,294	3,269,125	5,685,000
Pitt Co.	6,261,645	10,985,395	11,426,926	28,673,967
Polk Co.	356,535	0	1,289,871	1,646,406
Randolph Co.	7,166,353	9,257,230	9,163,323	25,586,906
Asheboro City	1,778,218	2,376,181	2,420,201	6,574,600
Richmond Co.	699,700	14,419,990	4,922,821	20,042,511
Robeson Co.	2,353,131	47,978,887	13,636,956	63,968,974
Rockingham Co.	597,196	8,453,474	8,394,464	17,445,134
Rowan Co.	10,776,269	8,743,009	11,392,192	30,911,471
Rutherford Co.	1,501,904	7,997,008	5,969,553	15,468,465
Sampson Co.	3,418,279	7,902,362	4,307,027	15,627,668
Clinton City	0	2,877,068	1,511,227	4,388,295
Scotland Co.	0	11,042,166	4,251,688	15,293,854
Stanly Co.	2,250,627	6,658,864	4,352,358	13,261,849
Albemarle City	793,290	1,955,352	1,298,113	4,046,755

Stokes Co.	1,341,463	3,901,196	3,976,759	9,219,417
Surry Co.	2,357,587	4,070,611	4,669,674	11,097,873
Elkin City	338,708	541,736	625,214	1,505,658
Mount Airy City	445,669	1,009,671	1,201,564	2,658,903
Swain Co.	338,708	3,198,646	974,909	4,512,263
Transylvania Co.	280,771	0	2,330,127	2,610,899
Tyrrell Co.	271,858	1,091,336	469,793	1,832,987
Union Co.	10,339,514	6,192,466	11,140,812	27,672,792
Vance Co.	1,488,533	8,361,014	4,374,140	14,223,687
Wake Co.	72,773,243	0	50,523,969	123,297,212
Warren Co.	548,173	5,550,739	1,857,391	7,956,302
Washington Co.	0	4,105,098	1,533,010	5,638,108
Watauga Co.	953,731	0	2,904,712	3,858,443
Wayne Co.	3,030,547	23,725,815	11,230,296	37,986,659
Wilkes Co.	106,960	8,353,208	5,837,093	14,297,261
Wilson Co.	2,223,887	4,833,060	7,211,150	14,268,097
Yadkin Co.	2,232,800	4,728,588	3,214,964	10,176,352
Yancey Co.	227,291	2,134,456	1,457,066	3,818,813

GRAND TOTAL

\$442,500,000 \$619,500,000 \$708,000,000 \$1,770,000,000

If two or more local school administrative units are consolidated into one unit, the distribution amounts provided above for the units shall be considered the distribution amount for the merged unit.

(d) Match. -- A county is not required to match bond proceeds allocated under subsection (b) of this section. A county is not required to match the Low-Wealth Allocation of bond proceeds under subsection (c) of this section. A county must match both the ADM Allocation and the Growth Allocation of bond proceeds under subsection (c) of this section. These two allocations must be matched at the rate of matching funds equal to three cents (3¢) times the county's ability to pay rank for every one dollar (\$1.00) of allocated bond proceeds. A county's ability to pay rank is its rank in the ranking of counties from lowest to highest county wealth as a percentage of State average wealth made by the State Board of Education for the 1995-96 fiscal year pursuant to Section 17.1 of Chapter 507 of the 1995 Session Laws. The match requirement may be satisfied by non-State expenditures for public school facilities made on or after January 1, 1992. A non-State expenditure has been made for the purpose of the match if funds, including funds expended for debt service, have been budgeted, earmarked, or committed for the general purpose of public school facilities. If a debt has been authorized or incurred since January 1, 1992, for the general purpose of public school facilities, then the face amount of the debt shall be considered as a non-State expenditure for public school facilities for the purpose of the match.

As counties satisfy the match requirements of this section, they shall document the extent to which they have done so in periodic reports to the State Board of Education. These reports shall include any information and documentation required by the State Board of Education. The State Board

of Education shall certify to the State Treasurer from time to time the extent to which the match requirements of this section have been met with respect to each county; this certification shall be binding and conclusive. Bond proceeds shall be distributed for expenditure only as, and to the extent, the matching requirements of this section are satisfied, as certified by the State Board of Education. The State Board of Education shall also require counties to report annually on the impact of funds provided under this act on the property tax rate for that year. These reports shall be public documents and shall be furnished to any citizen upon request.

(e) Unmatched Proceeds. -- If the State Board of Education determines that a county has not met the matching requirements of this section by January 1, 2003, with respect to any bond proceeds allocated under subsection (c) of this section, the State Board of Education shall certify that fact to the State Treasurer by March 1, 2003. Amounts that are allocated in the Growth Allocation of bond proceeds under subsection (c) of this section and that have not been matched by January 1, 2003, as certified by the State Board of Education, shall be reallocated among the counties that are allocated bond proceeds under the Growth Allocation and have met the matching requirements for their total Growth Allocation. The reallocation shall be made among the eligible counties in proportion to the amount of Growth Allocations for those counties under subsection (c) of this section. Amounts that are allocated in the ADM Allocation of bond proceeds under subsection (c) of this section and that have not been matched by January 1, 2003, as certified by the State Board of Education, shall be reallocated among the counties that have met the matching requirements for their total ADM allocation. The reallocation shall be made on the basis of average daily membership of the local school administrative units within the remaining counties. Bond proceeds reallocated to a county because of a local school administrative unit's average daily membership within the county may be used only with respect to public school capital outlay projects of that unit. Bond proceeds reallocated to a county under this subsection must be matched at the same rate as bond proceeds allocated to the county under subsection (d) of this section.

(f) Administration. -- Funds disbursed under this act shall be administered and supervised by the State Board of Education and shall be used only for the purposes provided in this act. Each school administrative unit shall submit to the State Board of Education its plans for the expenditure of funds allocated under this act. After the State Board of Education determines that a school administrative unit's planned expenditure of part or all of the funds allocated to it is within the purposes provided in this act, the State Board of Education shall make the funds to which the plans apply available to the school administrative unit.

Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(2)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Sec. 7. Election. -- The question of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at a statewide election to be held November 5, 1996. Any other primary,

election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held, may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond question to be used in the ballots or voting systems shall be in substantially the following form:

"[] FOR [] AGAINST

The issuance of one billion eight hundred million dollars (\$1,800,000,000) State of North Carolina Public School Building Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds to counties, with any other available funds, to pay the cost of public school building capital improvements."

If a majority of those voting on the Public School Building Bond question in the election vote in favor of the issuance of the bonds, the bonds may be issued as provided in this act. If a majority of those voting on the Public School Building Bond question in the election vote against the issuance of the bonds, the bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Sec. 8. Issuance of Bonds and Notes. -- (a) **Terms and Conditions.** Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) **Signatures; Form and Denomination; Registration.** -- Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his facsimile signature, shall be signed by the State Treasurer or shall bear his facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or

designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. -- Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

- (1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:
 - a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
 - b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
 - c. For the renewal of any loan evidenced by notes herein authorized;
 - d. For the purposes authorized in this act; and
 - e. For refunding bonds or notes as herein authorized.
- (2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of

interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) **Refunding Bonds and Notes.** -- By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) **Tax Exemption.** -- Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) **Investment Eligibility.** -- Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) **Faith and Credit.** -- The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes.

Sec. 9. Variable Interest Rates. -- In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;
- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and

- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Sec. 10. Other Agreements. -- The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines to be desirable in connection with the issuance of bonds and notes.

Sec. 11. Interpretation of Act. -- (a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. -- References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Liberal Construction. -- This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(d) Inconsistent Provisions. -- Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. -- If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. Critical School Facility Needs Fund. -- G.S. 115C-489.2(b) reads as rewritten:

~~"(b) The Commission on School Facility Needs State Board of Education shall make grants from the Fund to the counties which it determines, according to the following criteria, have the greatest critical school facility needs in relation to resources available to pay for school facility needs:~~

- ~~(1) The critical school facility needs in the county, as determined by the Commission on School Facility Needs pursuant to G.S. 115C-489.4. (Until the Commission issues a final report on~~

~~critical school facility needs in the counties, the Commission shall use the preliminary report.)~~

~~(2) Ability to pay as measured by:~~

~~a. The per pupil adjusted property tax base in the county. The per pupil adjusted property tax base in the county is the property tax base in the county adjusted using the sales assessment ratio study performed by the Department of Revenue, and~~

~~b. The per capita income of the county.~~

~~(3) Any critical nonschool needs that may force the county to divert its resources from school facilities, based on the grant priority list established in 1988 by The Commission on School Facility Needs until the next 11 local school administrative units on that priority list are funded."~~

Sec. 13. Repeal of The Commission on School Facility Needs. -- G.S. 115C-489.3 and G.S. 115C-489.4 are repealed.

Sec. 14. Repeal of the Critical School Facility Needs Fund. -- Effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2, Article 34A of Chapter 115C of the General Statutes is repealed. Any unexpended funds in the Critical School Facility Needs Fund, as provided for in G.S. 115C-489.1, which is repealed by this section, are transferred to the Public School Building Capital Fund created in G.S. 115C-546.1.

Sec. 15. Public School Building Capital Fund. -- G.S. 115C-546.1(b) reads as rewritten:

"(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to two thirty-firsts (2/31) of the net collections received during the previous quarter by the Department of Revenue under ~~G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000).~~ G.S. 105-130.3. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3."

Sec. 16. General Fund Expenditure Limit. -- The General Assembly recognizes that the State's numerous forms of assistance to local governments in funding school facilities and other needs in the past 20 years have led to a substantial reduction in local property tax rates. It is the intent of the General Assembly that the assistance provided in this act, if approved by the voters, shall further reduce local property tax rates. Any applicable General Fund expenditure limit for a fiscal year shall be increased by the amount of any increase in debt service requirements for the fiscal year due to the issuance of bonds or notes of the State under this act. Any applicable General Fund expenditure limit for a fiscal year shall be decreased by the amount of any decrease in debt service requirements for the fiscal year due to the retirement of bonds or notes of the State under this act. For the purpose of this section, the term "General Fund expenditure limit" means the General Fund expenditure limit set in G.S. 143-2.1, if enacted.

Sec. 17. Effective Dates. -- Sections 14 and 15 of this act become effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is

funded under G.S. 115C-489.2. The remainder of this act is effective upon ratification. This act does not obligate the General Assembly to appropriate funds.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 207

CHAPTER 632

AN ACT TO MAKE IT A FELONY OFFENSE TO SOLICIT A CHILD BY MEANS OF COMPUTER TO COMMIT AN UNLAWFUL SEX ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-202.3. Solicitation of a child by computer to commit an unlawful sex act.

(a) Offense. -- A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

(b) Jurisdiction. -- The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. -- A violation of this section is a Class I felony."

Sec. 2. This act becomes effective December 1, 1996, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1077

CHAPTER 633

AN ACT TO MAKE VARIOUS CHANGES IN THE MARINE FISHERIES LAWS AND TO CREATE A SCIENTIFIC ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 113-154(c1) reads as rewritten:

"(c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206 who purchases an individual shellfish license under this section, may utilize up to two additional persons to take shellfish from the leaseholder's lease without purchasing additional individual shellfish licenses. The leaseholder shall be on the premises supervising the person or persons, and the person or persons shall be restricted to taking shellfish only from the leaseholder's lease employ

persons who do not possess individual shellfish licenses, provided that the employees have written proof of employment on hand, if requested for inspection by a Marine Fisheries officer to verify lawful activities on the lease. The written proof of employment shall include: (i) the name and address of the leaseholder or franchise holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of the lease or franchise; and (iv) the employee's name and address. The proof of employment shall be signed and dated by the leaseholder or franchise holder."

(b) Section 3 of Chapter 547 of the 1995 Session Laws (1996 Regular Session) is amended by deleting the phrase "Carteret County" and by substituting the phrase "Core Sound".

Sec. 2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-190. Fishery Resource Grant Program.

(a) Creation. -- There is created within the Sea Grant College Program at The University of North Carolina, the Fishery Resource Grant Program. The purpose of the program is to work within priorities established by the Marine Fisheries Commission to protect and enhance the State's coastal fishery resources through individual grants in the following areas:

- (1) New fisheries equipment or gear;
- (2) Environmental pilot studies, including water quality and fisheries habitat;
- (3) Aquaculture or mariculture of marine dependent species; or
- (4) Seafood technology.

(b) Annual Establishment of Priorities. -- The Commission shall, in cooperation with fishermen, the Division of Marine Fisheries, and the Sea Grant College Program, establish priorities effective July 1 of each year for the grant program. The adoption of priorities by the Commission shall not be considered rule making within the meaning of the Administrative Procedure Act. The Commission shall provide public notice of its proposed priorities at least 30 days before the Commission meeting prior to a final determination of its priorities for the fiscal year.

(c) Procedure to Solicit Proposals. -- Following the establishment of priorities by the Commission, Sea Grant shall hold workshops within each of the coastal regions to solicit applications and to assist persons involved in fishing industries in writing proposals. For purposes of this act, the term 'fishing industry' includes persons involved in: (i) commercial or recreational fishing; (ii) aquaculture or mariculture; or (iii) handling fish products such as seafood dealers or processors. Sea Grant shall encourage preproposal conferences between individuals in the fisheries industry and those with technical or research background to work as partners in developing and writing the proposals and in writing final report results. If the grants approved by the Commission do not utilize all available funds, Sea Grant may advertise and solicit additional applications during the applicable fiscal year.

(d) Application for Grant Program. -- An applicant may apply for grant funds to the Sea Grant College Program. For purposes of this subsection, every proposal shall include substantial involvement of active North Carolina persons involved in a fishing industry. A proposal generated by a person

not involved in a fishing industry may be eligible for funding only if the proposal includes written endorsements supporting the project from persons or organizations representing fishing industries. An application shall include, but not be limited to, the following:

- (1) Name and address of the primary applicant;
- (2) List of licenses issued to the applicant by the State of North Carolina;
- (3) A description of the project;
- (4) A detailed statement of the projected costs of the project including the cost to plan and design the project;
- (5) An explanation of how the project will enhance the fishery resource;
- (6) List of names and addresses of any other persons who will participate in the project; and
- (7) Any other information necessary to make a recommendation on the application.

(e) Review Process. -- Sea Grant shall conduct an anonymous peer review of all applications for fisheries grants. At least one of the peer reviewers shall be a person involved in a fishing industry. Applications shall be confidential and shall not be defined as a public record as defined under G.S. 132-1 until after the closing date for submission of applications. Following the review of all proposals, Sea Grant shall rank proposals in order of priority and shall present the recommendations to the Commission. Any criterion used by Sea Grant in ranking proposals shall not require rule making within the meaning of the Administrative Procedure Act, but such criteria shall be public records as defined in G.S. 132-1.

(f) Award Process. -- The Commission shall review the ranking of proposals, and if consistent with the priority rankings established under subsection (e) of this section, shall fund those proposals. Applications that include involvement by fishermen in the project shall be accorded a priority in funding by the Commission. Following approval by the Commission, the Sea Grant College Program shall award the grants. To the extent practicable, the Sea Grant College Program shall distribute grant funding among the northern, southern, central, and Pamlico coastal regions.

(g) Restrictions on Grants. -- No member of the Commission may benefit financially from a grant. If a grant recipient from a prior year has failed to perform a grant project to the satisfaction of the Sea Grant College Program or the Commission, the Sea Grant College Program may decline to fund any new application involving the principal applicant.

(h) Grant Reports and Funding. -- Grant recipients shall provide quarterly progress reports to the Sea Grant College Program and shall submit invoices for expenditures for each quarter. Twenty-five percent (25%) of the total grant award shall be held until the grant recipient has completed the project and submitted a final written report. The remainder of the grant award shall be distributed upon approval of each quarterly report and upon verification of the expenditures.

(i) Report on Grant Program. -- The Sea Grant College Program shall report on an annual basis to the Marine Fisheries Commission and the Joint Legislative Commission on Seafood and Aquaculture."

Sec. 3. (a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.22J. Scientific Advisory Council on Water Resources and Coastal Fisheries Management established; membership, compensation.

(a) The Scientific Advisory Council on Water Resources and Coastal Fisheries Management (hereinafter 'Council') is created in the Department of Environment, Health, and Natural Resources.

(b) The Council shall have eight members, including the Secretary of the Department of Environment, Health, and Natural Resources, who shall chair the Council, and the Dean of the School of Agriculture and Life Sciences of North Carolina State University. The members of the Council shall elect a vice-chair from among the Council membership. The Chair of the Council shall solicit three recommendations from the scientific community including private scientists representing industrial and environmental concerns, as well as the academic community for each of the six appointees and shall select members from among those recommendations. Members shall have the following qualifications:

- (1) One member with expertise and training in water quality;
- (2) One member with expertise and training in coastal or marine fisheries;
- (3) One member with expertise and training in resource economics;
- (4) One member with expertise and training in physical modeling;
- (5) One member with expertise and training in wetlands; and
- (6) One member with expertise and training in the social sciences.

The members shall be appointed for staggered two-year terms and may be reappointed for subsequent terms. Members shall serve at the pleasure of the Secretary.

(c) To the extent that funds are made available, members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(d) A majority of the Council shall constitute a quorum for the transaction of its business.

(e) The Council may use funds allocated to it to employ an administrative staff person to assist the Council in carrying out its duties. The Secretary shall provide clerical and other support staff services needed by the Council.

(f) The Council shall meet quarterly, or more frequently at the request of the Chair or three members of the Council.

"§ 143-215.22K. Scientific Advisory Council on Water Resources and Coastal Fisheries Management; functions and responsibilities.

(a) The Council shall have the following responsibilities:

- (1) Review a plan prepared by the Department concerning the statewide implementation of an interagency comprehensive coordinated water resources and coastal fisheries management programs.
- (2) Discuss the limitations and problems associated with existing laws, regulations, programs, and services related to water resources and coastal fisheries.
- (3) Evaluate trends and conditions of the State's water quality resources and coastal fisheries management.

(4) Oversee the development of a comprehensive monitoring program including:

- a. Participating in the overall design of the plan relating to the collection and use of data;
- b. Evaluating statewide and national water resource and coastal fisheries programs;
- c. Coordinating funding sources for programs;
- d. Evaluating and developing research to address water quality and fisheries issues; and
- e. Reviewing procedures for awarding grants to local agencies providing services.

(5) Identify research and outreach needs and to commission studies to respond to those needs.

(6) Assist in developing and maintaining interagency training and technical assistance in the provision of water resource and coastal fisheries programs.

(b) The Secretary shall seek the advice of the Council on issues involving changes in water quality and fisheries management.

(c) The Council shall submit a written annual report not later than October 1 of each year, to the Secretary, the Governor, the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations. The report shall address the progress in implementation of a coordinated water resources and coastal fisheries management program. The report shall include an accounting of funds expended and anticipated funding needs for full implementation of recommended programs."

(b) Effective upon ratification, the Secretary shall appoint three members of the Council to one-year terms and the remaining three members to two-year terms.

Sec. 4. The Department of Environment, Health, and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of Environmental Management, Division of Marine Fisheries, Division of Epidemiology, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:

- (1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.
- (2) Responding to fish kills within 24 hours.
- (3) Investigating and collecting data relating to fish kill events.
- (4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties.

The Secretary of the Department shall take all necessary and appropriate steps to effectively carry out the purposes of this act including:

- (1) Providing adequate training for fish kill investigators.
- (2) Taking immediate action to protect public health and the environment.

- (3) Cooperating with agencies, scientists, and other interested parties, to help determine the cause of the fish kill.

The Department shall report annually to the Environmental Review Commission and the Senate Agriculture and Environment Committee no later than December 1 of each year. This report shall include a summary of all fish kill activity within the last year, an overview of any trend analyses, a discussion of any new or modified methodologies or reporting protocols, and any other relevant information.

Sec. 5. Funds appropriated to the Department of Environment, Health, and Natural Resources for the Fishery Resource Grant Program under Section 2 of Chapter 324 of the 1994 Session Laws shall be transferred to the Board of Governors of The University of North Carolina for the Sea Grant College Program to administer the Fishery Resource Grant Program. The Sea Grant College Program may use up to twenty-five thousand dollars (\$25,000) for administrative expenses relating to the Fishery Resource Grant Program.

Sec. 6. Notwithstanding subsection (b) of Section 2 of this act, the Marine Fisheries Commission may establish priorities by September 1, 1996, for the 1996-97 fiscal year.

Sec. 7. (a) The Marine Fisheries Commission may adopt temporary rules to establish recreational bag and size limits for bluefish, striped bass, and weakfish to comply with conservation equivalencies allowed under fisheries management plans adopted by the Atlantic States Marine Fisheries Commission. The Marine Fisheries Commission may adopt temporary rules to correct an omission concerning bag limits for spotted sea trout.

(b) The Marine Fisheries Commission may adopt temporary rules to change the closure days for shrimping.

Sec. 8. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Marine Fisheries Commission may adopt temporary rules to implement this act.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1149

CHAPTER 634

AN ACT TO CHANGE THE REQUIREMENTS PERTAINING TO PHYSICIAN LICENSING AND REGISTRATION WITH THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

Section I. (a) Effective January 1, 1998, G.S. 90-15.1 reads as rewritten:

"§ 90-15.1. Registration every ~~two years~~ year with Board.

Every person licensed to practice medicine by the North Carolina Medical Board shall, ~~during the month of January in every odd-numbered year, prior to January 31 of each year,~~ register with the Board. A person who registers with the Board shall report to the Board the person's name and office and residence address and any other information required by the Board, and

shall pay a registration fee fixed by the Board not in excess of ~~two one~~ hundred dollars ~~(\$200.00).~~ (\$100.00). For purposes of annual registration, the Board shall use a simplified registration form which allows registrants to confirm information on file with the Board. A physician who fails to register ~~when required~~ by January 31 shall pay an additional fee of twenty dollars (\$20.00) to the Board. ~~Should a physician fail to register and pay the fees imposed, and should such failure continue for a period of 30 days, the license of such physician may be suspended by the Board, after notice and hearing at the next regular meeting of the Board. The license of any physician who fails to register and said failure continues for a period of 30 days after certified notice of said failure, is automatically suspended. Upon payment of all accumulated fees and penalties which are due, penalties, the license of the physician may be reinstated, subject to the Board requiring the physician to appear before the Board for an interview and to comply with other licensing requirements."~~

(b) Notwithstanding any other provision of law, the 1997 registration fee fixed by the Board pursuant to G.S. 90-15.1 shall not exceed one hundred dollars (\$100.00).

Sec. 2. G.S. 90-12 reads as rewritten:

"§ 90-12. ~~Limited license.~~ license; limited volunteer license.

(a) The Board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make any modifications of the requirements of G.S. 90-9, 90-10, and 90-11 as in its judgment the interests of the people living in that locality may demand, and may issue to the applicant a special license, to be entitled a 'Limited License,' authorizing the holder of the limited license to practice medicine and surgery within the limits only of the districts specifically described therein. A resident's training license shall expire at the time its holder ceases to be a resident in the training program or obtains any other license to practice medicine issued by the Board. The holder of the limited license practicing medicine or surgery beyond the boundaries of the districts as laid down in said license shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; and the Board may revoke the limited license, in its discretion, after due notice.

(b) ~~As used in this section:~~ subsection (a) of this section:

(1) 'Limited license' includes a resident's training license.

(2) 'Resident training license' means a license to practice in a medical education and training program, approved by the Board, for the purpose of education or training.

(c) The Board shall issue to an applicant a special license to be entitled a 'Limited Volunteer License,' authorizing the holder of the limited license to practice medicine and surgery only at clinics which specialize in the treatment of indigent patients. The holder of a limited license issued pursuant to this subsection may not receive compensation for services rendered at clinics specializing in the care of indigent patients. The Board shall issue a limited license under this subsection to an applicant who:

(1) Has a license to practice medicine and surgery in another state;

- (2) Produces a letter from the state of licensure indicating the applicant is in good standing; and
- (3) Is authorized to treat personnel enlisted in the United States armed services or veterans.

The Board shall issue a limited license under this subsection within 30 days after an applicant provides the Board with information satisfying the requirements of this subsection.

The holder of a limited license issued pursuant to this subsection who practices medicine or surgery at places other than clinics which specialize in the treatment of indigent patients shall be guilty of a Class 3 misdemeanor and, upon conviction, shall only be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; and the Board may revoke the limited license, in its discretion, after due notice."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1268

CHAPTER 635

AN ACT TO EXPEDITE DISPOSAL OF UNCLAIMED VEHICLES BY TOWING AND STORAGE BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-77(d) reads as rewritten:

"(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public in which a vehicle remains unclaimed for ~~30 days~~, 10 days, or the landowners upon whose property a motor vehicle has been abandoned for more than ~~60 days~~, 30 days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the Division. Failure to make such report shall constitute a Class 3 misdemeanor.

Any vehicle which remains unclaimed after report is made to the Division may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A."

Sec. 2. G.S. 44A-4(a) reads as rewritten:

"(a) Enforcement by Sale. -- If the charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 30 days ~~days~~ or, in the case of towing and storage charges on a motor vehicle, 10 days ~~following the maturity of the obligation to pay any such charges~~, the lienor may enforce the lien by public or private sale as provided in this section. The lienor may bring an action on the debt in any court of competent jurisdiction at any time following maturity of the obligation. Failure of the lienor to bring such action within a 180-day period following the commencement of storage shall constitute a waiver of any right to collect storage charges which accrue after such period. Provided that when property is placed in storage pursuant to an express contract of storage, the lien shall continue and the lienor may

bring an action to collect storage charges and enforce his lien at any time within 120 days following default on the obligation to pay storage charges.

The owner or person with whom the lienor dealt may at any time following the maturity of the obligation bring an action in any court of competent jurisdiction as by law provided. If in any such action the owner or other party requests immediate possession of the property and pays the amount of the lien asserted into the clerk of the court in which such action is pending, the clerk shall issue an order to the lienor to relinquish possession of the property to the owner or other party. The request for immediate possession may be made in the complaint, which shall also set forth the amount of the asserted lien and the portion thereof which is not in dispute, if any. If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the lienor does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond, which the plaintiff says in his complaint is not in dispute, upon application of the lienor. The magistrate or judge shall direct appropriate disbursement of the disputed or undisbursed portion of the bond in the judgment of the court. In the event an action by the owner pursuant to this section is heard in district or superior court, the substantially prevailing party in such court may be awarded a reasonable attorney's fee in the discretion of the judge."

Sec. 3. G.S. 44A-4(b)(1) reads as rewritten:

- "(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the ~~30-day~~ relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, within 15 days of receipt of notice from the lienor, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property

pursuant to such lien, the recipient should notify the Division that a hearing is desired and the Division shall notify lienor. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. Failure of the recipient to notify the Division within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, the Division shall notify the lienor, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the Division notifies the lienor that the registered or certified mail notice has been returned as undeliverable, or if the Division cannot ascertain the name of the person having legal title to the vehicle and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days thereafter, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom the Division has mailed notice pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, ~~two or more bona fide bids on the vehicle were received, the names, addresses and bids of the bidders,~~ and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Sec. 4. G.S. 44A-4(e) reads as rewritten:

"(e) Public Sale. --

- (1) Not less than 20 days prior to sale by public sale the lienor:
 - a. Shall notify the Commissioner of Motor Vehicles as provided in G.S. 20-114(c) if the property upon which the lien is claimed is a motor vehicle; and
 - a1. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party or other person claiming an interest in the property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (f) hereof; and
 - b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held;

and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale. The notice of sale need not be published if the vehicle has a market value of less than three thousand five hundred dollars (\$3,500), as determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

- (2) A public sale must be held on a day other than Sunday and between the hours of 10:00 A.M. and 4:00 P.M.:
 - a. In any county where any part of the contract giving rise to the lien was performed, or
 - b. In the county where the obligation secured by the lien was contracted for.

(3) A lienor may purchase at public sale."

Sec. 5. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1395

CHAPTER 636

AN ACT TO ALLOW FOR INITIATIVE, REFERENDUM, AND RECALL IN THE TOWN OF RIVER BEND AND TO DELAY THE EFFECTIVE DATE OF THE LAW REQUIRING THE REGISTER OF DEEDS TO COMPLY WITH MINIMUM INDEXING STANDARDS FOR LAND RECORDS MANAGEMENT IN BRUNSWICK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of River Bend, as approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, is amended by adding a new section to read:

"Sec. VII. *Recall.* The Mayor and members of the Town Council are subject to removal pursuant to this section. An officer is removed upon the filing of a sufficient recall petition and the affirmative vote of a majority of those voting on the question of removal at a recall election.

A recall petition shall be filed with the Town Clerk, who shall immediately forward the petition to the board of elections that conducts elections for the Town of River Bend. A petition to recall the Mayor or a member of the Town Council shall bear the signatures equal in number to at least twenty-five percent (25%) of the registered voters of the Town of River Bend.

The board of elections shall verify the petition signatures. If a sufficient recall petition is submitted, the board of elections shall certify its sufficiency to the governing body, and the governing body shall adopt a resolution calling for a recall election to be held not less than 60 days nor more than 100 days after the petition has been certified to the governing body. The election may be held by itself or at the same time as any other general or special election within the period established in this section, and shall be held as otherwise provided in G.S. 163-287. The board of elections shall conduct the recall election. The proposition submitted to the voters shall be substantially in the following form:

'[] FOR [] AGAINST

The recall of [name of officer]'

The registered voters of the Town of River Bend are eligible to vote in an election to recall the Mayor or a member of the Town Council.

If less than a majority of the votes cast on the question are for the officer's recall, the officer continues in office. If a majority of the votes cast on the question are for the officer's recall, the officer is removed on the date the board of elections certifies the results of the election. A vacancy created by removal of a member of the Town Council or the Mayor shall be filled in accordance with the provisions of G.S. 160A-63.

No petition to recall an officer may be filed within six months after the officer's election to the governing body nor within six months before the expiration of the officer's term. No more than one election may be held to recall an officer within a single term of office of that officer."

Sec. 2. The Charter of the Town of River Bend, as approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, is amended by adding a new section to read:

"Sec. VIII. *Initiative and Referendum.*

(a) Initiative power. The qualified voters of the Town of River Bend have the power under this section to propose any ordinance to the Town Council which the Town Council has the power to adopt under this Charter or general law, except a budget ordinance, a bond order, a franchise ordinance, or an amendment to the Charter to change the Town's form of government to one of the alternatives set forth in G.S. 160A-101.

The initiative process may be used to repeal any ordinance that could be proposed under the initiative process except that it may not be used to repeal

any ordinance affirmed by a referendum election within one year after the referendum vote. If the governing body fails to adopt the ordinance without substantive change, the voters have the power to approve or reject the proposed ordinance.

These powers comprise the initiative power.

(b) Referendum power. The qualified voters of the Town of River Bend have the power to require reconsideration by the governing body of any adopted ordinance, except a budget ordinance, a bond order, a franchise ordinance, or any ordinance that by law may not be adopted without prior public notice and a public hearing. If the governing body fails to repeal an ordinance which it has been required to reconsider, the voters shall have the power to approve or reject the referred ordinance at the polls.

These powers comprise the referendum power.

(c) Commencement of proceedings. Five or more registered voters of the Town of River Bend may commence an initiative or referendum petition by filing with the Town of River Bend Clerk an affidavit stating that they will constitute the petitioners' committee and will be responsible for circulating the petition and filing it in proper form.

(d) Signatures. An initiative or referendum petition shall bear the signatures equal in number to at least fifteen percent (15%) of the registered voters of the Town of River Bend.

(e) Form and content. Within 90 days of the effective date of this section, the governing body shall by ordinance specify the form and content of a petition and procedures for initiative and referendum elections, consistent with the provisions of this Charter and consistent with generally recognized form and content requirements and procedures for initiative and referendum petitions and elections.

(f) Time for filing. An initiative petition may be filed at any time. A referendum petition must be filed within 30 days after adoption by the governing body of the ordinance sought to be reconsidered.

(g) Certification. The petition shall be filed with the Town Clerk and signatures shall be verified by the board of elections conducting elections for the Town. The governing body shall by ordinance adopt reasonable, generally recognized procedures for certifying the sufficiency of a petition. The governing body shall provide in the ordinance reasonable time limits for completing the certification of sufficiency of the petition.

(h) Suspension of effectiveness of referred ordinance. When, within the time allowed, a referendum petition is filed with the Town Clerk, the effectiveness of the ordinance sought to be reconsidered is suspended. The suspension of the effectiveness of the ordinance shall terminate when:

- (1) There is a final determination that the petition is insufficient;
- (2) The petitioners' committee withdraws the petition as set forth in subsection (k) of this section; or
- (3) The Board of Elections certifies that the repeal of the ordinance has been rejected in an election.

(i) Consideration. When an initiative or referendum petition has been finally determined to be sufficient, the governing body shall promptly consider it.

(j) Submission to voters. With respect to ordinances, if the governing body fails to adopt without substantive change an ordinance proposed by initiative petition or fails to repeal a referred ordinance within 60 days after the date on which the petition was certified as sufficient, the Town Council shall cause the proposed ordinance or the referred ordinance to be submitted to the voters of the Town of River Bend. The vote on the proposed ordinance or the referred ordinance shall be held within 150 days of the date on which the petition was certified as sufficient.

(k) Withdrawal. The petitioners' committee, being those registered voters named in the affidavit commencing the initiative or referendum, may withdraw the initiative or referendum petition at any time prior to the fifteenth day immediately preceding the day scheduled for a vote on the proposed or referred ordinance. The written request for withdrawal shall be signed by at least eighty percent (80%) of the members of the petitioners' committee and must be filed with the Town Clerk. The filing of the request withdraws the petition. A withdrawn petition has no further effect and all proceedings are terminated.

(l) Effective date. With respect to ordinances, if a majority of those voting in an initiative election approve the proposed ordinance, it shall become an ordinance of the Town of River Bend on the date the results of the election are certified or a later effective date specified in the proposed ordinance, provided that the governing body may make nonsubstantive changes to the ordinance that it deems necessary or desirable.

(m) Effect of referendum. If a majority of those voting in a referendum election approve the repeal of the referred ordinance, it is repealed on the date the results of the election are certified. If less than a majority of those voting in the election approve the repeal of the ordinance, the ordinance is an ordinance of the Town of River Bend and shall become effective on the date the results of the election are certified or a later effective date specified in the referred ordinance."

Sec. 3. Section 1 of this act becomes effective only if approved by ordinance of the Town of River Bend and approval by the qualified voters of the Town of River Bend in a referendum. The question on the ballot shall be:

"[] FOR [] AGAINST

Amending the Charter of the Town of River Bend to allow
for Recall Elections for the Mayor and Town Council."

Sec. 4. Section 2 of this act becomes effective only if approved by ordinance of the Town of River Bend and approval by the qualified voters of the Town of River Bend in a referendum. The question on the ballot shall be:

"[] FOR [] AGAINST

Amending the Charter of the Town of River Bend to allow
Initiative and Referendum."

Sec. 5. Prior to adopting any ordinance under Section 3 or 4 of this act, the Town Council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to this act, but it need not contain the precise text of the charter amendments

necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council shall make any ordinance adopted pursuant to this section effective only if approved by a vote of the people and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 180 days after adoption of the ordinance. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes.

Sec. 6. Section 3 of Chapter 697 of the 1991 Session Laws, as amended by Section 3 of Chapter 178 of the 1993 Session Laws, reads as rewritten:

"Sec. 3. Section 2 of this act becomes effective January 1, ~~1995~~, 1999. The remainder of this act is effective upon ratification."

Sec. 7. Section 6 of this act applies only to Brunswick County.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1221

CHAPTER 637

AN ACT RELATING TO SALES OF SEIZED, UNCLAIMED PROPERTY BY THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-13 reads as rewritten:

"§ 15-13. *Public sale 30 days after publication of notice.*

If said articles shall remain unclaimed or satisfactory evidence of ownership thereof not be presented to the sheriff or police department, as the case may be, for a period of 30 days after the publication of the notice provided for in G.S. 15-12, then the said sheriff or police department in whose custody such articles may be is hereby authorized and empowered to sell the same at public auction or by sealed bid for cash to the highest bidder, either at the courthouse door of the county, the county law enforcement headquarters if the sale is conducted by the sheriff, ~~or~~ at the police headquarters of the municipality in which the said articles of property are located, or, if the sale is by sealed bid, in the office of the purchasing department, and at such sale to deliver the same to the purchaser or purchasers thereof."

Sec. 2. This act applies to the City of Winston-Salem only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1222

CHAPTER 638

AN ACT AMENDING THE CHARTER OF THE CITY OF WINSTON-SALEM RELATING TO THE SALE OF PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Section 110 of Chapter 232 of the 1927 Private Laws, as amended by Chapter 440, Public-Local Laws of 1939, Chapter 63 of the 1969 Session Laws, and Chapters 105 and 121 of the 1971 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1223

CHAPTER 639

AN ACT RELATING TO THE DAILY DEPOSIT OF COLLECTIONS AND RECEIPTS BY THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 79 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~City~~ Cities of Greensboro and Winston-Salem only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1365

CHAPTER 640

AN ACT CONCERNING MODIFICATION OF THE MUNICIPAL LIMITS BETWEEN THE CITY OF RALEIGH AND THE TOWN OF GARNER.

The General Assembly of North Carolina enacts:

Whereas, the southern extraterritorial zoning jurisdiction limits of the City of Raleigh and the northern town limits of the Town of Garner coincide in the area of the future intersection of Hammond Road, a N.C.D.O.T. construction project in progress, and relocated Mechanical Boulevard, also a D.O.T. highway construction project in progress; and

Whereas, as a result of the relocation of Mechanical Boulevard, the City of Raleigh and the Town of Garner desire to amend their intermunicipal agreement so as to relocate their jurisdictional limits to coincide with the relocation of Mechanical Boulevard, which is anticipated to be completed on approximately June 30, 1997; and

Whereas, such realignment of the municipal limits would involve removing from the annexed area of Garner a small tract of land presently in the Garner town limits,

The General Assembly of North Carolina enacts:

Section 1. The town limits of the Town of Garner in the area generally north of the present intersection of Mechanical Boulevard and McCormick Street being approximately 486 feet in length and west of the beginning of the intersection of relocated Mechanical and Hammond Road, are amended by being moved to the south, to coincide with the northern right-of-way of the relocated Mechanical Boulevard as presently under construction and that the aforesaid area is removed from the corporate limits of the Town of Garner.

Sec. 2. This act does not affect the validity of any taxes levied by the Town of Garner for years prior to 1997.

Sec. 3. This act is effective June 30, 1997.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1378

CHAPTER 641

AN ACT AUTHORIZING DURHAM COUNTY TO ENTER INTO CONTRACTS TO CONSTRUCT SIDEWALKS WITHIN THE COUNTY'S JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. The County of Durham may enter into contracts with the City of Durham or private contractors to construct sidewalks within the County's jurisdiction, which is outside of the incorporated area of any city jurisdiction. The County may use county funds to pay for the construction of these sidewalks.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1385

CHAPTER 642

AN ACT TO AUTHORIZE THE DURHAM CITY COUNCIL TO DETERMINE THE NUMBER OF REGULAR MEETINGS OF THE CITY COUNCIL TO BE HELD EACH MONTH.

The General Assembly of North Carolina enacts:

Section 1. Section 11(1) of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, reads as rewritten:

"(1) Regular meetings of the City Council shall be held ~~at least twice but not more than four times each month~~ at such times as may be designated by ordinance of the City Council."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1397

CHAPTER 643

AN ACT TO INCORPORATE THE VILLAGE OF SLOOP POINT IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Sloop Point is enacted to read:

"CHARTER OF THE VILLAGE OF SLOOP POINT.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporate and Corporate Powers.* The inhabitants of the Village of Sloop Point are a body corporate and politic under the name, 'Village of Sloop Point'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE POWERS.

"Sec. 2.1. *Village Boundaries.* Until modified in accordance with law, the boundaries of the Village of Sloop Point are located in Topsail Township, Pender County, North Carolina, more fully described as:

1. Western boundary: Westernmost part of the right-of-way N.C. Highway 1563 beginning at the point where the Southern boundary S 42 15' 15" E intersects N.C. Highway 1563 and extending north to where N.C. Highway 1670 intersects with N.C. Highway 1563.

2. Eastern boundary: Mean low-water line of Western side of the Intercoastal Waterway, from corner marker N 40 21' 30" W for 300.28 ft. to Northernmost part of the right-of-way of N.C. Highway 1670 then South along the Westside of the Intercoastal Waterway to a corner marker at N 42 17' 30" West.

3. Northern boundary: From N.C. Highway 1563 down the Northernmost part of right-of-way of N.C. Highway 1670 to Pelican Walk Road, thence N 40 21' 30" W - 300.28 ft. to the corner marker at the low-water line of the Intercoastal Waterway.

4. Southern boundary: From the corner marker at the low-water line of the Intercoastal Waterway, a line running N 42 17' 30" W - 554.35 ft., thence N 47 42' 30" E - 8.23 ft., thence S 42 15' 15" E - 2,721.62 ft. ending at the Northside of the right-of-way of Highway 1563.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. *Structure of Governing Body; Number of Members.* The governing body of the Village of Sloop Point is the Village Council, which has four members, and the Mayor.

"Sec. 3.2. *Interim Officers.* Until the regular municipal election to be held in November 1997, Fred F. Brooks, Judith R. Rumsey, Timothy A. Paye, and James Troy Johnson shall serve as Council Members and Leslie

Lee shall serve as Mayor. In their respective capacities, they shall possess and may exercise the powers granted to the Council and Mayor until their successors are elected and qualify.

"Sec. 3.3. *Manner of Electing Council.* The qualified voters of the entire Village elect the members of the Council.

"Sec. 3.4. *Terms of Office of Council Members.* Those two candidates receiving the highest numbers of votes in the first election shall be elected for four-year terms. Those two candidates receiving the next highest numbers of votes shall be elected for two-year terms. Thereafter the successor members of the Council shall be elected for four-year terms.

"Sec. 3.5. *Election of the Mayor; Term of Office.* The qualified voters of the entire Village elect the Mayor. He/She is elected to a four-year term of office.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Village Elections.* Village officers shall be elected on a nonpartisan basis and the results determined by a plurality as provided by G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. *Village to Operate Under the Mayor-Council Plan.* The Village of Sloop Point operates under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5.2. From and after the effective date of this act, the citizens and property in the Village of Sloop Point shall be subjected to municipal taxes levied for the year beginning July 1, 1996, and for that purpose the Village shall obtain from Pender County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1996; and the businesses in the Village shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Village may adopt a budget ordinance for the fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1996-97, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if taxes had been due and payable on September 1, 1996. The Village of Sloop Point is eligible to receive distributions of State funds during fiscal year 1996-97."

Sec. 2. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 878

CHAPTER 644

AN ACT TO AUTHORIZE CERTAIN AIRPORT BOARDS AND COMMISSIONS TO OWN, OPERATE, AND FINANCE THE PURCHASE AND IMPROVEMENT OF WATER AND WASTEWATER SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 63-56 is amended by adding a new subsection (q) to read:

"(q) In the case of an airport board or commission authorized by agreement between two cities, as defined in G.S. 160A-1(2), pursuant to this section, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, the board or commission shall have the authority to acquire, construct, establish, enlarge, improve, maintain, own, operate and contract for the operation of water supply and distribution systems and wastewater collection, treatment and disposal systems of all types, on and off the airport premises. In no event, however, shall such a board or commission be held liable for damages to those off the airport premises for failure to provide such water or wastewater services."

Sec. 2. G.S. 160A-20(h) is amended by adding a new subdivision (5a) to read:

"(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only."

Sec. 3. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional sports authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Sec. 4. G.S. 159G-3(10) reads as rewritten:

"(10) 'Local government unit' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, joint agency authorized by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that also provided water and wastewater services off the airport premises before January 1, 1995, or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1094

CHAPTER 645

AN ACT TO INCREASE CERTAIN FEES UNDER THE NURSING HOME ADMINISTRATOR ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-280 reads as rewritten:

"§ 90-280. Fees; display of license; duplicate license; inactive list.

(a) Each applicant for an examination administered by the Board and each applicant for an administrator-in-training program shall pay a fee set by the Board not to exceed two hundred dollars (\$200.00).

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount set by the Board not to exceed ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00). A license shall expire on the thirtieth day of September of the second year following its issuance and shall be renewable biennially upon payment of a renewal fee set by the Board not to exceed ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00).

(c) Each person licensed as a nursing home administrator shall display his license certificate, along with the current certificate of renewal, in a conspicuous place in his place of employment.

(d) Any person licensed as a nursing home administrator may receive a duplicate license by payment of a fee set by the Board not to exceed twenty-five dollars (\$25.00).

(e) Any person licensed as a nursing home administrator who is not acting, serving, or holding himself out to be a nursing home administrator may have his name placed on an inactive list for such period of time not to exceed five years upon payment of a fee set by the Board not to exceed twenty-five dollars (\$25.00).

(f) Any person having a temporary license issued pursuant to G.S. 90-278(3) shall pay a fee in an amount set by the Board not to exceed one hundred dollars (\$100.00). If the Board renews the temporary license, no further fee shall be required.

(g) The Board may set fees not to exceed two hundred and fifty dollars (\$250.00) for conducting and administering initial training and continuing education courses, and may set a fee not to exceed ~~twenty-five dollars (\$25.00)~~ one hundred dollars (\$100.00) for certifying a course submitted for review by another individual or agency wishing to offer such courses."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1178

CHAPTER 646

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO

ALLOW THE VOLUNTARY WITHHOLDING OF INCOME TAX FROM UNEMPLOYMENT COMPENSATION PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-53(i2) reads as rewritten:

"(i2) Affidavit in Lieu of Records. -- The merchant may satisfy the record requirement of subsection (i1) of this section by producing, in lieu of a receipt or invoice, an affidavit under oath or affirmation identifying the source of the merchandise for which a record is requested, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise."

Sec. 2. G.S. 105-113.45(c) reads as rewritten:

"(c) Liquid Base Products. -- An excise tax at the rate of seventy-five cents (75¢) a gallon is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink."

Sec. 3. G.S. 105-117 and G.S. 105-118 are repealed.

Sec. 4. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following when purchased for use ~~in the commercial production of animals or plants, as appropriate; on animals or plants, as appropriate,~~ held or produced for commercial purposes:

- a. Remedies, vaccines, medications, litter materials, and feeds for animals.
- b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- c. Defoliant for use on cotton or other crops.
- d. Plant growth inhibitors, regulators, or stimulants, including systemic and contact or other sucker control agents for tobacco and other crops."

Sec. 5. G.S. 105-164.13(29a) is repealed.

Sec. 6. G.S. 105-164.14(c)(2a) reads as rewritten:

"(2a) A consolidated city-county ~~created pursuant to Article 2 or Article 5 of Chapter 160B of the General Statutes,~~ as defined in G.S. 160B-2."

Sec. 7. G.S. 105-191 and G.S. 105-196 are repealed.

Sec. 8. G.S. 105-197 reads as rewritten:

"§ 105-197. When return required; due date of tax and return.

Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary of Revenue on a form prescribed by the Secretary. ~~A return~~ The tax is due on or before April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Sec. 9. G.S. 105-229 is repealed.

Sec. 10. G.S. 105-236 reads as rewritten:

"§ 105-236. Penalties.

Except as otherwise provided ~~in this Subchapter~~, by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

- (1) **Penalty for Bad Checks.** -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, an additional tax equal to ten percent (10%) of the check shall be imposed, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary of Revenue finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by ~~inadvertance, inadvertence,~~ the drawer of the check failed to draw the check on the account that had sufficient funds. The additional tax imposed may not be waived or diminished by the ~~Secretary of Revenue.~~ ~~This subsection applies to all taxes levied or assessed by the State.~~ Secretary.
- (1a) **Penalty for Bad Electronic Funds Transfer.** -- When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). ~~This subdivision applies to all taxes levied or assessed by the State.~~ This penalty may be waived by the Secretary in accordance with G.S. 105-237.
- (1b) **Making Payment in Wrong Form.** -- For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
- (2) **Failure to Obtain a License.** -- For failure to obtain a license before engaging in a business, trade or profession for which a license is required, there shall be assessed an additional tax equal to five percent (5%) of the amount prescribed for such the license per month or fraction thereof until paid, which additional tax shall not exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00).
- (3) **Failure to File Return.** -- In case of failure to file any return ~~required under this Subchapter~~ on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on such the return, as a penalty, five percent (5%) of the amount of such the tax if the failure is for not more than one

month, with an additional five percent (5%) for each additional month, or fraction thereof, during which ~~such the~~ failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars (\$5.00), whichever is the greater.

- (4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars (\$5.00).

- (5) Negligence. --

a. Most cases. -- For negligent failure to comply with any of the provisions of ~~this Subchapter~~, to which this Article applies, or rules and regulations issued pursuant thereto, without intent to defraud, there shall be assessed, as a penalty, an additional tax of ten percent (10%) of the deficiency due to ~~such negligence; provided, that in the negligence.~~

b. Large income tax deficiency. -- ~~In the case of income tax, if gross income is understated by as much as twenty-five percent (25%), or deductions, exclusive of personal exemptions, are overstated by as much as twenty-five percent (25%) of gross income, or if there is a combination of understatement of gross income and overstatement of deductions, exclusive of personal exemptions, equaling twenty-five percent (25%) of gross income, there shall be assessed, as a penalty, an additional tax equal to twenty-five percent (25%) of the total deficiency; provided further, that in a taxpayer understates gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed twenty-five percent (25%) of gross income, the penalty assessed shall be twenty-five percent (25%) of the deficiency. For purposes of this subdivision, 'gross income' means gross income as defined in section 61 of the Code and 'deductions' means deductions allowed in arriving at federal taxable income.~~

c. Large sales tax deficiency. -- ~~In the case of sales and use taxes, if it is established that the a taxpayer understates total tax liability is understated by twenty-five percent (25%) or more as a result of any one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:~~

- a. 1. Omission or understatement of gross sales, gross receipts receipts, or gross purchases; purchases.
- b. 2. Overstatement of exemptions or deductions; deductions.
- c. 3. Incorrect application of a lesser rate of tax. tax; or
- d. Any combination of the foregoing; there shall be assessed as a penalty an additional tax equal to twenty-five percent (25%) of the total deficiency. If a penalty is assessed under subdivision (6) of this section, no additional penalty for

~~negligence shall be assessed with respect to the same deficiency.~~

- d. No double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.
- (5a) Misuse of Certificate of Resale. -- For misuse of a certificate of resale by a purchaser, the Secretary shall assess an additional tax, as a penalty, of two hundred fifty dollars (\$250.00).
- (5b) Road Tax Understatement. -- If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.
- (6) Fraud. -- If there is a deficiency or delinquency in payment of any ~~tax levied by this Subchapter, due to~~ tax because of fraud with intent to evade the tax, there shall be assessed, as a penalty, an additional tax equal to fifty percent (50%) of the total deficiency.
- (7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat ~~any tax imposed by this Subchapter of the General Statutes, or the payment thereof,~~ a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars (\$25,000).
- (8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required ~~under this Subchapter~~ to collect, withhold, account for, and pay over any tax ~~imposed by this Subchapter~~ who willfully fails to collect or truthfully account for and pay over ~~such the~~ tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.
- (9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required ~~under this Subchapter~~ to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay ~~such the~~ tax, make ~~such the~~ return, keep ~~such the~~ records, or supply ~~such the~~ information, at the time or times required by law, or ~~regulations~~ rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.
- (9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a

return, affidavit, claim, or any other document that ~~he~~ the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars (\$10,000).

(10) Failure to File Informational Returns. --

a. For failure to file a partnership or a fiduciary informational return when ~~such returns are~~ the return is due to be filed, there shall be assessed as a tax against the delinquent five dollars (\$5.00) per month or fraction thereof of ~~such the~~ delinquency, such tax, this penalty, however, in the aggregate not to exceed ~~the sum of~~ twenty-five dollars (\$25.00). When assessed against a fiduciary, the ~~tax herein provided~~ penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure 'the Department of Revenue' is substituted for 'the Internal Revenue Service'.

b. For failure to file timely statements of payments to another person ~~or persons~~ with respect to wages, dividends, ~~rents~~ rents, or interest paid to ~~such other person or persons, that person,~~ there shall be assessed as a tax a penalty of one dollar (\$1.00) for each statement not filed on time, the aggregate of ~~such the~~ penalties for each tax year not to exceed one hundred dollars (\$100.00), and in addition thereto, if the Secretary ~~shall request~~ requests the ~~payor~~ payer to file ~~such the~~ statements and ~~shall set~~ sets a date ~~on or before such statements shall by which the statements must be filed, and the payor shall fail to file such~~ payer fails to file the statements within such this time, the amounts claimed on payor's payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the ~~payor~~ payer failed to comply with the Secretary's request with respect to ~~such the~~ statements.

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27."

Sec. 11. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. -- ~~The~~ There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary must assess any tax ~~or additional tax~~ due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Sec. 12. G.S. 105-275(21) reads as rewritten:

"(21) The first thirty-eight thousand dollars (\$38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under ~~Title 38, section 801, United States Code Annotated.~~ 38 U.S.C. § 2101. This exclusion shall be the total amount of the exclusion applicable to such property."

Sec. 13. Effective July 1, 1996, G.S. 105-275.1(b) reads as rewritten:

"(b) Subsequent Distributions. -- As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the

percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1991, except as provided in subsection (f), the Secretary shall pay to each county and city the amount it received under this section the preceding year plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivision (v) of subsection (a) contained in the list submitted by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practical after January 1, 1992, except as provided in subsection (f), the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before April 30, 1993, except as provided in subsection (f), the Secretary shall distribute to each county and city ninety-nine and eighty-one one-hundredths percent (99.81%) of the amount it received under this section the preceding year. Thereafter, until August 1995, except as provided in subsection (f), on or before April 30 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this section. ~~Beginning in August 1995 and each~~ Each year thereafter, except as provided in subsection (f), the Secretary shall distribute to each county and city ~~sixty percent (60%)~~ fifty percent (50%) of this amount on or before ~~August~~ September 30 and the remaining ~~forty percent (40%)~~ fifty percent (50%) on or before the following April 30.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of

the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, until August 1995, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. Each year thereafter, ~~beginning in August 1995~~, as soon as practical after receiving funds under this subsection in ~~August~~, September, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to ~~sixty percent (60%)~~ fifty percent (50%) of the amount it distributed among such districts in April 1995, and as soon as practicable after receiving funds under this subsection in April, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to ~~forty percent (40%)~~ fifty percent (50%) of the amount it distributed among such districts in April 1995.

The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently."

Sec. 14. Effective July 1, 1996, G.S. 105-277A reads as rewritten:

"§ 105-277A. *Reimbursement for exclusion of retailers' and wholesalers' inventories.*

(a) Submission of Claims. -- On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in

the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

(b) First Per Capita Distribution. -- As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars (\$15,745,000). Thereafter, as soon as practicable after January 1 of 1990 and 1991, the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before April 30 of 1992, 1993, 1994, and 1995, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Beginning August 1995 and each year thereafter, the Secretary shall determine for each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Each year, the Secretary shall distribute to each taxing unit ~~sixty percent (60%)~~ fifty percent (50%) of this share on or before ~~August~~ September 30 and the remaining ~~forty percent (40%)~~ fifty percent (50%) of this share on or before the following April 30.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) Second Per Capita Distribution. -- On or before March 20, 1989, the Secretary shall allocate to each county the county's per capita share of the sum of thirty-nine million dollars (\$39,000,000).

Each year thereafter through April 1995, on or before April 30, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection. On or before August 30, 1995, the

Secretary shall determine for each county the amount it received in April 1995 under this subsection. ~~Beginning in August 1995 and each~~ Each year thereafter, the Secretary shall distribute ~~sixty percent (60%)~~ fifty percent (50%) of this amount to each county on or before ~~August~~ September 30 and the remaining ~~forty percent (40%)~~ fifty percent (50%) to each county on or before the following April 30.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(c1) Claims-based Distribution. -- On or before March 20, 1989, the Secretary shall distribute to each county and city an amount equal to the amount by which the county or city's inventory loss, as defined in subsection (d) of this section, exceeds the amount of the reimbursement received by the county or city under subsection (c) of this section.

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. ~~Beginning in August 1995 and each~~ Each year thereafter, the Secretary shall distribute ~~sixty percent (60%)~~ fifty percent (50%) of this amount to each county and city on or before ~~August~~ September 30 and the remaining ~~forty percent (40%)~~ fifty percent (50%) of this amount to each county and city on or before the following April 30.

(c2) Supplemental Distribution. -- On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the

amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. ~~Beginning in August 1995 and each~~ Each year thereafter, the Secretary shall distribute ~~sixty percent (60%)~~ fifty percent (50%) of this amount to each county and city on or before ~~August~~ September 30 and the remaining ~~forty percent (40%)~~ fifty percent (50%) of this amount to each county and city on or before the following April 30.

(c3) Distribution to Special Districts. -- Of the funds received by each county and city pursuant to subsections (c), (c1), and (c2) of this section, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in proportion to the amount of each special district's inventory levy, as defined in subsection (d) of this section, as soon as practicable after the city or county receives funds under this subsection. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently. ~~The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in subsection (a) of this section.~~

(d) Definitions. -- The following definitions apply in this section:

- (1) 'City' has the same meaning as in G.S. 153A-1(1).
- (2) 'City's inventory loss' means the city's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the city collected taxes in 1987, but whose tax rates were not included in the city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the city under G.S. 105-472, 105-486, 105-501, and

Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

- (3) 'County's inventory loss' means the county's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the average rate for each special district for which the county collected taxes in 1987, but whose tax rates were not included in the county's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.
- (4) 'Special district's inventory levy' means the special district's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district.
- (5) 'Taxing unit' means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year preceding the fiscal year a distribution is made under this section.

(e) Population Estimates. -- In making the per capita calculations under this section, the Secretary shall use the most recent annual population estimates certified by the State Planning Officer.

(f) Source of Funds. -- To pay for the distribution required by this section and the cost of making the distribution, the Secretary shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the amount distributed and the cost of making the distribution.

(g) Correction of Errors. -- If the Secretary discovers that the amount or value of any inventories listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsections (c1) and (c2) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories."

Sec. 15. G.S. 105-278.7(a)(1) reads as rewritten:

"(1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection ~~(e)~~, (f), below; or".

Sec. 16. G.S. 105-282.1(a)(3) reads as rewritten:

"(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), (21) or (39), G.S. ~~105-277.1~~ 105-277.1, or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not required to file an application in subsequent years except in the following circumstances:

- a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or
- b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion."

Sec. 17. G.S. 105-277.2(4)a. reads as rewritten:

"a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business ~~entity~~ entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity."

Sec. 18. G.S. 105-333 reads as rewritten:

"§ 105-333. *Definitions.*

~~When used~~ The following definitions apply in this Article unless the context requires a different meaning:

- (1) ~~"Airline company" means a public service~~ Airline company. -- A company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.
- (2) ~~"Bus line company" means a public service~~ Bus line company. -- A company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation ~~be~~ is within, into, or from this State.

- (3) ~~"Distributable system property" means all~~ Distributable system property. -- All real property and tangible and intangible personal property owned or used by a railroad company other than nondistributable system property.
- (4) ~~"Electric membership corporation" means a public service~~ Electric membership corporation. -- A company which is organized, reorganized, or domesticated under the provisions of Chapter 117 of the General Statutes and which is engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (5) ~~"Electric power company" means a public service~~ Electric power company. -- A company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
- (6) Repealed by Session Laws 1973, c. 783, s. 5.
- (7) ~~"Flight equipment" means aircraft~~ Flight equipment. -- Aircraft fully equipped for flying and used in any operation within this State.
- (8) ~~"Gas company" means a public service~~ Gas company. -- A company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.
- (9) ~~"Locally assigned rolling stock" means rolling~~ Locally assigned rolling stock. -- Rolling stock that is owned or leased by a motor freight carrier company, specifically assigned to a terminal or other premises, and is regularly used at the premises to which assigned.
- (10) ~~"Motor freight carrier company" means a~~ Motor freight carrier company. -- A company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as provided in this subdivision:
- a. As to interstate carrier companies domiciled in North Carolina, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the term also includes a North Carolina interstate carrier that does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of the carrier to taxing units in one or more other states.
 - b. As to interstate carrier companies domiciled outside this State, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.
 - c. As to intrastate carrier companies, this term includes only those carriers that are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.

- (11) ~~"Nondistributable system property" means the~~ Nondistributable system property. -- The following properties owned by a railroad company: Land land other than right-of-way, depots, machine shops, warehouses, office buildings, other structures, and the contents of the structures listed in this subdivision.
- (12) ~~"Nonsystem property" means the~~ Nonsystem property. -- The real and tangible personal property owned by a public service company but not used in its public service activities.
- (13) ~~"Pipeline company" means a public service~~ Pipeline company. -- A company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.
- (14) ~~"Public service company" means~~ Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision.
- (15) ~~"Railroad company" means a public service~~ Railroad company. -- A company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a company operating a passenger service on the lines of any railroad located wholly or partly in this State.
- (16) ~~"Rolling stock" means motor~~ Rolling stock. -- Motor vehicles, railroad locomotives, and railroad cars that are propelled by mechanical or electrical power and used upon the highways or, in the case of railroad vehicles, upon tracks.
- (17) ~~"System property" means the~~ System property. -- The real property and tangible and intangible personal property used by a public service company in its public service activities. ~~It also means~~ The term also includes public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities.
- (18) ~~"Telegraph company" means a public service~~ Telegraph company. -- A company engaged in the business of transmitting telegraph messages to, from, within, or through the State.

- (19) ~~"Telephone company" means a public service Telephone company.~~ -- A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.

(20) Repealed by Session Laws 1973, c. 783, s. 5."

Sec. 19. G.S. 58-6-25(d) reads as rewritten:

"(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for the following:

- (1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.
- (2) Money money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article."

Sec. 20. G.S. 113-44.15(b) reads as rewritten:

"(b) ~~Beginning July 1, 1995, funds~~ Funds in the Trust Fund are annually appropriated to the North Carolina Parks and Recreation Authority and, unless otherwise specified by the General Assembly or the terms or conditions of a gift or grant, shall be allocated and used as follows:

- (1) Sixty-five percent (65%) for the State Parks System for capital projects, repairs and renovations of park facilities, and land acquisition.
- (2) Thirty percent (30%) to provide matching funds to local governmental units on a dollar-for-dollar basis for local park and recreation purposes. These funds shall be allocated by the North Carolina Parks and Recreation Authority based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund administered by the National Park Service of the United States Department of the Interior.
- (3) Five percent (5%) for the Coastal and Estuarine Water Beach Access Program.

Of the funds appropriated to the North Carolina Parks and Recreation Authority from the Trust Fund each year, no more than three percent (3%) may be used by the Department for operating expenses associated with

managing capital improvements projects, acquiring land, and administration of local grants programs."

Sec. 21. G.S. 132-1.1(b) reads as rewritten:

"(b) State and Local Tax Information. -- Tax information may not be disclosed except as provided in G.S. ~~105-259, 153A-148.1, and 160A-208.1~~ 105-259. As used in this subsection, 'tax information' has the same meaning as in G.S. 105-259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A-148.1 and G.S. 160A-208.1."

Sec. 22 (a) The text of G.S. 160B-3 is designated as subsection (a) and G.S. 160B-4(c) is recodified as G.S. 160B-3(b).

(b) G.S. 160B-3, as amended by this section, reads as rewritten:

"~~§ 160B-3. Authority; purpose of district.~~ purpose; administration.

(a) The governing board may define any number of urban service districts in order to finance, provide or maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, ~~provided~~ provided, or maintained for the entire consolidated city-county.

(b) The powers, duties, functions, rights, privileges, and immunities of an urban service district shall be exercised or administered by the governing board of the consolidated city-county. Any revenues, ~~distributions~~ distributions, or other funds due an urban service district shall be paid to the governing board of the consolidated city-county."

Sec. 23. (a) Section 4 of Chapter 991 of the 1983 Session Laws reads as rewritten:

"Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Duck Area Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Dare County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Duck Area Beautification District and shall file a copy of the resolution with the clerk of superior court of Dare County. Upon establishing the Duck Area Beautification District, the Dare County Board of Commissioners may annually levy on behalf of the district an ad valorem tax on all taxable property in the district in an amount the board considers necessary to provide for the installation of underground power lines, not to exceed ten cents (10¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the underground installation of power lines in the district."

(b) Section 4 of Chapter 363 of the 1989 Session Laws reads as rewritten:

"Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting on an election called under Section 1 of this act vote in favor of creating the Outer Banks Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Dare County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Outer Banks Beautification District and shall file a copy of the resolution with the clerk of superior court of Dare County. Upon establishing the Outer Banks Beautification District, the Dare County Board of Commissioners may annually levy on behalf of the district an ad

valorem tax on all taxable property in the district in an amount the board considers necessary to provide for the installation of underground utility lines and facilities, not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the underground installation of utility lines and facilities in the district."

(c) Sections 1 through 5 of Chapter 400 of the 1989 Session Laws are repealed.

(d) Section 4 of Chapter 703 of the 1989 Session Laws reads as rewritten:

"Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Coinjock Canals Area Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Currituck County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Coinjock Canals Area Beautification District and shall file a copy of the resolution with the clerk of superior court of Currituck County. Upon establishing the Coinjock Canals Area Beautification District, the Currituck County Board of Commissioners may annually levy on behalf of the district an ad valorem tax on all taxable property in the district in an amount the board considers necessary to provide for the installation of underground utility lines, not to exceed ten cents (10¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the underground installation of utility lines in the district."

(e) Section 4 of Chapter 685 of the 1991 Session Laws reads as rewritten:

"Sec. 4. District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Poplar Tent Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Cabarrus County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Poplar Tent Beautification District and shall file a copy of the resolution with the clerk of the superior court of Cabarrus County. Upon establishing the Poplar Tent Beautification District, the Cabarrus County Board of Commissioners may annually levy on behalf of the district an ad valorem tax on all taxable property in the district in an amount the board considers necessary to develop and implement the beautification plan and projects described in Section 1 of this act, that amount not to exceed five cents (5¢) for each one hundred dollars (\$100.00) taxable valuation of property. The proceeds of this tax shall be used only to develop and implement the beautification plan and projects described in Section 1 of this act."

Sec. 24. G.S. 105-330.2(a) reads as rewritten:

"(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined as follows:

- (1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.

- (2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires. If

If the value of a new motor vehicle cannot be determined as of January 1 preceding the date the new registration is applied for, date specified above, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State. The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed."

Sec. 25. (a) G.S. 96-12 is amended by adding a new subsection to read:

"(g) Income Tax Withholding. -- When an individual files a new claim for unemployment compensation, the individual shall be advised in writing at the time of filing that:

- (1) Unemployment compensation is subject to federal and State individual income tax.
- (2) Requirements exist pertaining to estimated tax payments.
- (3) The individual may elect to have federal individual income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 3402 of the Code. The term 'Code' has the same meaning as defined in G.S. 105-228.90.
- (4) The individual may elect to have State individual income tax deducted and withheld from the individual's payment of unemployment compensation in an amount determined by the individual.
- (5) The individual may change a previously elected withholding status.

The Commission shall follow the procedures specified by the United States Department of Labor, the Internal Revenue Service, and the Department of Revenue pertaining to the deducting and withholding of individual income tax. The amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Insurance Fund until transferred to the appropriate taxing authority as a payment of income tax. If two or more deductions are made from an individual's unemployment compensation payment, then the deductions will be deducted and withheld in accordance with priorities established by the Commission."

(b) This section becomes effective January 1, 1997, and applies to unemployment compensation payments made on or after that date.

Sec. 26. Except as otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1198

CHAPTER 647

AN ACT TO CLARIFY THE REQUIREMENTS CONCERNING IMPORTS AND EXPORTS OF MOTOR FUEL UNDER THE "TAX AT THE RACK" LAWS AND TO MAKE OTHER ADJUSTMENTS TO THOSE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.60 is amended by adding the following subdivision in the appropriate alphabetical order and renumbering the succeeding subdivisions accordingly:

"(20) In-State-only supplier. -- Either of the following:

- a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
- b. A supplier that does business only in this State."

Sec. 2. G.S. 105-449.60, as amended by Section 1 of this act, is amended by adding the following subdivision in the appropriate alphabetical order and renumbering the succeeding subdivisions accordingly:

"(35) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis."

Sec. 3. G.S. 105-449.65 reads as rewritten:

"§ 105-449.65. *List of persons who must have a license.*

(a) License. -- A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) ~~An exporter, if the Secretary imposes this requirement by rule.~~
- (6) (5) A blender.
- (7) (6) A motor fuel transporter.
- (8) (7) A bulk-end user of undyed diesel fuel.
- (9) (8) A retailer of undyed diesel fuel.

(b) Multiple Activity. -- A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank

wagon importer is not required to obtain a separate license as a distributor. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

Sec. 4. G.S. 105-449.66(a)(2) reads as rewritten:

"(2) Occasional importer. -- An occasional importer is ~~a person who~~ any of the following that imports motor fuel by any means outside the terminal transfer system.

a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.

b. A bulk-end user that is not a distributor.

c. A distributor that imports motor fuel for use in a race car."

Sec. 5. G.S. 105-449.67 reads as rewritten:

"§ 105-449.67. *List of persons who may obtain a license.*

(a) License. -- A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

(1) A distributor.

(2) A permissive supplier.

(3) An exporter.

(b) Effect on Exports. -- An exporter license or a distributor license authorizes the license holder to pay the destination state tax on motor fuel purchased for export instead of paying this State's tax on the fuel. An unlicensed exporter or unlicensed distributor must pay this State's tax on motor fuel purchased for export.

(c) Multiple Activity. -- A person who is licensed as a distributor is considered to have a license as an exporter."

Sec. 6. G.S. 105-449.69 reads as rewritten:

"§ 105-449.69. *How to apply for a license.*

(a) General. -- To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

(b) Most Licenses. -- An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, a bulk-end user of undyed diesel fuel, a retailer of undyed diesel fuel, or a distributor must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.

(2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.

(3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.

- (4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(c) Federal Certificate. -- An applicant for a license as a refiner, a supplier, a terminal operator, a blender, or a permissive supplier must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an ~~importer~~ importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section.

(d) ~~Import and Export~~ Activity. -- An applicant for a license as an importer or as a distributor must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to import motor fuel from a state not listed on the license holder's application for an importer's license or a distributor's license must give the Secretary written notice of the change before importing motor fuel from that state. The notice must include the information that is required on the license application.

(e) Export Activity. -- An applicant for a license as an exporter must designate an agent located in North Carolina for service of process and must give the agent's name and address. An applicant for a license as an exporter or as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to export motor fuel to a state not listed on the license holder's application for an exporter's license or a distributor's license must give the Secretary written notice of the change before exporting motor fuel to that state. The notice must include the information that is required on the license application."

Sec. 7. G.S. 105-449.70(a) reads as rewritten:

"(a) Election. -- An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an in-State-only supplier."

Sec. 8. G.S. 105-449.70(b) is amended by adding a new subdivision to read:

"(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred."

Sec. 9. G.S. 105-449.71(b) is amended by adding a new subdivision to read:

"(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred."

Sec. 10. G.S. 105-449.72 reads as rewritten:

"§ 105-449.72. *Bond or letter of credit required as a condition of obtaining and keeping certain licenses.*

(a) Initial Bond. -- An applicant for a license as a refiner, a terminal operator, a supplier, an importer, an exporter, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

- (1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):
 - a. A refiner.
 - b. A terminal operator.
 - c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
 - d. A bonded importer.
 - e. A permissive supplier.
- (2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):
 - a. A supplier that is a fuel alcohol provider but is ~~not~~ neither a position holder ~~or~~ nor a person that receives motor fuel pursuant to a two-party exchange.
 - b. An occasional importer.
 - c. A tank wagon importer.
 - d. A distributor.
 - e. An exporter.
- (3) For an applicant for a license as a blender, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars (\$2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.

(b) Multiple Activity. -- ~~A bond filed under this section must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for a license as a distributor and either an occasional importer or a tank wagon importer two~~

or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under ~~both activities.~~ all the activities. A bond for these combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

~~(b)~~ (c) Adjustment to Bond. -- When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section."

Sec. 11. G.S. 105-449.73 reads as rewritten:

"§ 105-449.73. *Reasons why the Secretary can deny an application for a license.*

The Secretary may refuse to issue a license to an individual applicant that has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business has done any of the following:

(1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.

(2) Had a motor fuel license or registration issued by another state cancelled for cause.

~~(2)~~ (3) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.

~~(3)~~ (4) Been convicted of fraud or misrepresentation.

~~(4)~~ (5) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license."

Sec. 12. G.S. 105-449.77 reads as rewritten:

"§ 105-449.77. *Records and lists of license applicants and license holders.*

(a) Records. -- The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(b) ~~Distributor List.~~ Supplier Lists. -- The Secretary must give a list of licensed ~~distributors~~ suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier that asks for a copy of the list. ~~supplier.~~ The list must state the name, name, account number, and business address of each ~~distributor~~ license holder on the list. The Secretary must send a monthly update of the list to each supplier that requested a copy of the list. licensed supplier.

~~(c) Supplier List. -- The Secretary must give a list of licensed suppliers to each distributor that asks for a copy of the list. The list must state the name and business address of each supplier on the list and must indicate whether the supplier is an elective supplier or a permissive supplier. The~~

~~Secretary must send an annual update of the list to each distributor that requested a copy of the list.~~

The Secretary must give a list of licensed suppliers to each licensed distributor, licensed exporter, and licensed importer. The Secretary must also give a list of licensed suppliers to each unlicensed distributor or unlicensed exporter that asks for a copy of the list. The list must state the name, account number, and business address of each supplier on the list and must indicate whether the supplier is an elective supplier, a permissive supplier, or an in-State-only supplier. The Secretary must send an annual update of the list to each licensed distributor, licensed exporter, and licensed importer, and to each unlicensed distributor or unlicensed exporter that requested a copy of the list.

(c) Transporter Lists. -- The Secretary must give a list of licensed motor fuel transporters to each licensed supplier, licensed terminal operator, licensed importer, licensed blender, licensed distributor, and licensed exporter. The list must state the name, account number, and business address of each motor fuel transporter on the list. The Secretary must send a monthly update of the list to each license holder to whom the Secretary must give the list.

The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed blenders, licensed distributors, and licensed exporters to each licensed motor fuel transporter. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed motor fuel transporter."

Sec. 13. G.S. 105-449.81 reads as rewritten:

"§ 105-449.81. *Excise tax on motor fuel.*

An excise tax at the motor fuel rate is imposed on motor fuel that is:

- (1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.
- (2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- (3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.
- (4) Fuel grade ethanol that meets any of the following descriptions:
 - a. Is removed from a terminal or another storage and distribution facility, unless the removed fuel is received by a supplier for subsequent sale.
 - b. Is imported to this State outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car.
- (4) (5) Blended fuel made in this State or imported to this State.
- (6) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code."

Sec. 14. G.S. 105-449.82(c) reads as rewritten:

"(c) **Terminal Rack Removal.** -- The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel."

Sec. 15. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.83A. Liability for tax on fuel grade ethanol.

The excise tax imposed by G.S. 105-449.81(4) on fuel grade ethanol removed from a storage facility is payable by the fuel alcohol provider. The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer."

Sec. 16. G.S. 105-449.84 reads as rewritten:

"§ 105-449.84. Liability for tax on blended fuel.

(a) **On Blender.** -- The excise tax imposed by G.S. ~~105-449.81(4)~~ 105-449.81(5) on blended fuel made in this State is payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

(b) **On Importer.** -- The excise tax imposed by G.S. ~~105-449.81(4)~~ 105-449.81(5) on blended fuel imported to this State is payable by the importer.

(c) **Blends Made at Terminal.** -- The following blended fuel is considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

- (1) An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon.
- (2) A kerosene splash-blend made when kerosene is delivered at a terminal into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered at that terminal into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend."

Sec. 17. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.84A. Liability for tax on behind-the-rack transfers.

The excise tax imposed by G.S. 105-449.81(6) on motor fuel transferred within the terminal transfer system is payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which

the fuel was transferred, all of whom are jointly and severally liable for the tax."

Sec. 18. G.S. 105-449.85(b) reads as rewritten:

"(b) Liability. -- The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this ~~section~~ section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on ~~a report~~ an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for. A terminal operator may establish that motor fuel received at a terminal but not shown on ~~a report~~ an informational return as having been removed from the terminal was lost or part of a transmix and is therefore not unaccounted for."

Sec. 19. G.S. 105-449.87(a)(4) is repealed.

Sec. 20. G.S. 105-449.88 reads as rewritten:

"§ 105-449.88. *Exemptions from the excise tax.*

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination ~~state that is printed on the shipping document for the motor fuel~~ state. If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal.
- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system."

Sec. 21. Effective July 1, 1997, G.S. 105-449.88, as amended by Section 20 of this act, reads as rewritten:

"§ 105-449.88. *Exemptions from the excise tax.*

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state. ~~If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal.~~
- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system."

Sec. 22. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.89. Removals by out-of-state bulk-end user.

An out-of-state bulk-end user may remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located as follows:

- (1) Upon payment to the supplier of tax on the motor fuel at the motor fuel rate.
- (2) Upon payment to the supplier of destination, state tax on the motor fuel, if the bulk-end user acquires the fuel from a supplier who, with respect to the destination state of the fuel, is either a permissive supplier or an elective supplier and therefore collects the destination state tax on the fuel."

Sec. 23. G.S. 105-449.90 reads as rewritten:

"§ 105-449.90. When tax return and payment are due.

(a) Filing Periods. -- The excise tax imposed by this Article is payable when a return is due. A return is due annually, quarterly, or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 1st of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. -- A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

(c) Quarterly Filers. -- A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.

(d) Monthly Filers on 22nd. -- The following persons must file a monthly return by the 22nd of each month:

- (1) A refiner.
- (2) A supplier.
- (3) A bonded importer.
- (4) A blender.
- (5) A tank wagon importer.
- (6) A person that is liable incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that is liable incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 1st. -- An occasional importer must file a monthly return by the 1st of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a

reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier."

Sec. 24. Part 4 of Article 36C of Chapter 105 of the General Statutes is amended by adding the following section to read:

"§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination state if the supplier is licensed in that state for payment of motor fuel excise taxes. Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes. Payments of destination state tax are due to the destination state or the Secretary, as appropriate, on the date set by the law of the destination state. Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the information required by the Secretary."

Sec. 25. G.S. 105-449.91 reads as rewritten:

"§ 105-449.91. Remittance of tax by distributor to supplier.

(a) Distributor. -- A distributor that is liable for the must remit tax imposed due on motor fuel removed at a terminal rack must remit the tax to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to the State. Payment of tax by this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the unlicensed distributor and the supplier. G.S. 105-449.76 governs the cancellation of a distributor's license. supplier and the unlicensed distributor.

(b) Exporter. -- An exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed exporter that is also licensed in the destination state has the right to defer the remittance of tax to the supplier until the date set by the law of the destination state of the fuel. The time when an unlicensed exporter, or a licensed exporter that is not also licensed in the destination state, must remit tax to a supplier is governed by the terms of the contract between the supplier and the exporter.

(c) Importer. -- A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. -- The method by which a distributor, an exporter, or a licensed importer must remit tax to a supplier is governed by the terms of the contract between the supplier and the distributor, exporter, or licensed importer and the supplier. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

Sec. 26. G.S. 105-449.92 reads as rewritten:

"§ 105-449.92. Notice to suppliers of cancellation or reissuance of a distributor's license; certain licenses; effect of notice.

(a) Notice to Suppliers. -- If the Secretary cancels a distributor's ~~license,~~ license, an exporter's license, or an importer's license, the Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to a ~~distributor distributor,~~ distributor, an exporter, or an importer whose license was cancelled, the Secretary must notify all suppliers of the issuance.

(b) Effect of Notice. -- A supplier that sells motor fuel to a distributor or an exporter after receiving notice from the Secretary that the Secretary has cancelled the distributor's or exporter's license is jointly and severally liable with the distributor or exporter for any tax due on motor fuel the supplier sells to the distributor or exporter after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor or unlicensed exporter after the supplier receives notice from the Secretary that the Secretary has issued another license to the ~~distributor,~~ distributor or exporter."

Sec. 27. G.S. 105-449.93 reads as rewritten:

"§ 105-449.93. *Exempt sale deduction and percentage discount for licensed ~~distributors,~~ distributors and some licensed importers.*

(a) Deduction. -- A ~~licensed distributor~~ license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the ~~distributor~~ license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the ~~distributor~~ license holder used an access card or code specified by the supplier to notify the supplier of the ~~distributor's~~ license holder's intent to resell the fuel in an exempt ~~sale,~~ sale:

(1) A licensed distributor.

(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.

(b) Percentage Discount. -- A licensed distributor that pays the ~~excise~~ tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the ~~excise~~ tax due the supplier by the date the supplier must pay the tax to the State."

Sec. 28. G.S. 105-449.94 reads as rewritten:

"§ 105-449.94. *Quarterly reconciling return for exempt sales by licensed ~~distributor,~~ distributor and some licensed importers.*

(a) Return. -- A licensed distributor or a licensed importer that deducts exempt sales under G.S. 105-449.93(a) when paying tax to a supplier must file a quarterly reconciling return for the exempt sales. The return must list the following information:

(1) The number of gallons for which a deduction was taken during the quarter, by supplier.

(2) The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchasers of the fuel in the exempt sales.

(b) Payment. -- If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter exceeds the number of exempt gallons sold, the licensed distributor or licensed importer must pay tax on the difference at the motor fuel rate. The licensed distributor or licensed importer is not allowed a percentage discount when paying tax under this subsection.

(c) Refund. -- If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter is less than the number of exempt gallons sold, the Secretary must refund the licensed distributor ~~for the amount of tax paid on the difference.~~ The Secretary must reduce the amount of the refund by the amount of the percentage discount ~~the distributor received on the fuel.~~

~~(d) Exception. -- If the number of gallons for which a licensed distributor takes a deduction during a quarter equals the number of exempt gallons sold, the licensed distributor is not required to file a return under this section for that quarter. The Secretary may waive the requirement of filing a return under this section in other specified circumstances."~~

Sec. 29. G.S. 105-449.95 reads as rewritten:

"§ 105-449.95. Quarterly hold harmless for licensed ~~distributors.~~ distributors and some licensed importers.

(a) Calculation. -- At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the quarter is less than the amount the distributor or importer would have received if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer from a supplier during each month of the quarter under the following schedule:

<u>Amount of Gasoline Purchased</u> <u>Each Month</u>	<u>Percentage Discount</u>
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

(b) Refund. -- If the amount the licensed distributor or licensed importer received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor or importer would have received on the distributor's or importer's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor or importer a refund check for the difference. In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for gasoline purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State."

Sec. 30. G.S. 105-449.96 reads as rewritten:

"§ 105-449.96. Information required on return filed by supplier.

A return of a supplier must list all of the following information and any other information required by the Secretary:

- (1) The number of gallons of tax-paid motor fuel received by the supplier during the month by the supplier by a system transfer, by month, sorted by type of fuel, and by terminal, seller, point of origin, destination state, and carrier.
- ~~(2)~~ The number of gallons of motor fuel imported during the month by the supplier by a means of transfer outside the terminal transfer system.
- ~~(3)~~ (2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, by receiving distributor, and by terminal, exporter, or importer, terminal code, and carrier.
- (4) (3) The number of gallons of motor fuel removed during the month for export, sorted by distributor and by terminal, and, for each removal, the destination state of the fuel, type of fuel, receiving distributor or exporter, terminal code, destination state, and carrier.
- ~~(5)~~ (4) The number of gallons of motor fuel removed during the month, by distributor and by terminal, at month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, fuel, sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier.
- ~~(6)~~ (5) The number of gallons of motor fuel the supplier sold during the month, by distributor and by terminal, month to either any of the following: following, sorted by type of fuel, exempt entity, receiving distributor, terminal code, and carrier:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A licensed distributor that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as ~~reported~~ indicated by the distributor.
 - c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.
- ~~(7)~~ (6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors, sorted by distributor, distributors or licensed importers."

Sec. 31. G.S. 105-449.97 reads as rewritten:

"§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.

(a) Taxes Not Remitted. -- When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax a licensed distributor any of the following license holders owes the supplier but failed to remit to the supplier, supplier:

- (1) A licensed distributor.

- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) A licensed exporter, if the destination state of the exported motor fuel allows a supplier in that state to deduct from the amount of tax payable with a return the amount of tax an exporter licensed in that state owes the supplier but fails to pay.

A supplier is not liable for tax a licensed distributor license holder listed in this subsection owes the supplier but fails to pay. If a licensed distributor listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the distributor's payment to the Secretary. When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted.

(b) Administrative Discount. -- A supplier that files a timely return may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel from distributors, fuel.

(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or unlicensed exporter or to the bulk-end user, the retailer, or user of the fuel can may take the same percentage discount on the fuel that a licensed distributor can may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

Sec. 32. Effective July 1, 1997, G.S. 105-449.97(a), as amended by Section 31 of this act, reads as rewritten:

"(a) **Taxes Not Remitted.** -- When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following license holders owes the supplier but failed to remit to the supplier:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) ~~A licensed exporter, if the destination state of the exported motor fuel allows a supplier in that state to deduct from the amount of tax payable with a return the amount of tax an exporter licensed in that state owes the supplier but fails to pay.~~

~~A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary. When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted."~~

Sec. 33. G.S. 105-449.98 reads as rewritten:

"§ 105-449.98. Duties of supplier concerning payments by ~~distributors, distributors, exporters, and importers.~~

(a) As Fiduciary. -- A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed ~~distributor, distributor, licensed exporter, or licensed importer.~~ A supplier is liable for taxes paid to the supplier by a licensed ~~distributor, distributor, licensed exporter, or licensed importer.~~

(b) Notification to ~~Distributor, Distributor or Exporter.~~ -- A supplier must notify a licensed distributor ~~or licensed exporter~~ that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the licensed distributor ~~or licensed exporter~~ must remit to the supplier the amount of tax due on the fuel.

(c) Notification to Department. -- A supplier of motor fuel at a terminal must notify the Department within 10 business days after a return is due of any licensed distributors ~~or licensed exporters~~ that did not pay the tax due the supplier when the supplier filed the return. The notification must be transmitted to the Department in the form required by the Department.

(d) Payment Application. -- A supplier that receives a payment of ~~excise~~ tax from a distributor ~~or a licensed exporter~~ may not apply the payment to debts for motor fuel purchased from the supplier."

Sec. 34. G.S. 105-449.100 reads as rewritten:

"§ 105-449.100. ~~Report by terminal operator. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.~~

A terminal operator must make file a monthly ~~report to informational~~ return with the Secretary ~~of that~~ shows the amount of motor fuel received or removed from the terminal during the month. The ~~report return~~ is due by the 25th day of the month following the month covered by the ~~report and~~ return. The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
- (2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
- (3) The number of gallons of motor fuel gained or lost at the terminal during the month."

Sec. 35. G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. ~~Reports by those that transport motor fuel. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.~~

(a) Requirement. -- A person that transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make file a monthly ~~report to informational~~ return with the Secretary ~~of that~~ shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. -- The ~~report return~~ required by this section is due by the 25th day of the month following the month covered by the ~~report and return~~. The return must contain the following information and any other information required by the Secretary:

- (1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.
- (2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel."

Sec. 36. G.S. 105-449.102 reads as rewritten:

"§ 105-449.102. Report of Distributor to file return showing exports from a bulk plant.

(a) Return. -- A distributor that exports motor fuel from a bulk plant located in this State must make file a monthly report to return with the Secretary of that shows the exports. The ~~report return~~ is due by the 25th day of the month following the month covered by the ~~report~~. The report return. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. -- The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel exported during the month.
- (2) The destination state of the motor fuel exported during the month.
- (3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel."

Sec. 37. Part 4 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.104. Use of name and account number on return.

When a transaction with a person licensed under this Article is required to be reported on a return, the return must state the license holder's name and the account number used by the Department to identify the license holder. The name of a license holder and the license holder's account number is stated on the lists compiled under G.S. 105-449.77."

Sec. 38. G.S. 105-449.105 reads as rewritten:

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, ~~used in boats~~ fuel unsalable for highway use, and undyed diesel fuel used in boats.

(a) Exempt Fuel. -- A distributor may obtain a refund of tax paid by the distributor on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

(b) **Lost Fuel.** -- A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a refund for the tax paid on the fuel.

(c) **Accidental Mixes.** -- A person that accidentally combines any of the following may obtain a refund for the amount of tax paid on the fuel:

- (1) Dyed diesel fuel with tax-paid motor fuel.
- (2) Gasoline with diesel fuel.
- (3) Undyed diesel fuel with dyed kerosene.

(d) **Marina.** -- A marina may obtain a refund of tax paid by the marina on undyed diesel fuel purchased for use in a boat or another marine vessel. The refund applies only to undyed diesel fuel delivered at the time of purchase into a storage facility that is marked 'For Boat Use Only' or another phrase that clearly indicates the fuel is not to be used to operate a highway vehicle.

(e) **Refund Amount.** -- The amount of a refund allowed under this section is the amount of tax ~~paid,~~ paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93."

Sec. 39. G.S. 105-449.115(e) reads as rewritten:

"(e) **Duties of Person Receiving Shipment.** -- A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel."

Sec. 40. G.S. 105-449.115(f) reads as rewritten:

"(f) ~~Sanctions.~~ **Sanctions Against Transporter.** -- The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

- (1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.
- (2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on ~~the amount of fuel improperly transported or diverted and~~ whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is ~~the amount of motor fuel tax payable on the improperly transported or diverted motor fuel.~~ one thousand

five hundred dollars (\$1,500). For a second or subsequent assessment under this subsection, the penalty is ~~the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel.~~ seven thousand five hundred dollars (\$7,500). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

Sec. 41. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars (\$1,000). The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container."

Sec. 42. G.S. 105-449.120(a) reads as rewritten:

"(a) Class 1. -- A person who commits any of the following acts is guilty of a Class 1 misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to ~~make~~ file a ~~report~~ return required by this Article.
- (3) Willfully fails to pay a tax when due under this Article. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment.
- (3a) Willfully fails to pay a tax collected on behalf of a destination state to that state when it is due.
- (4) Makes a false statement in an application, a ~~report~~, return, or a statement required under this Article.
- (5) Makes a false statement in an application for a refund.
- (6) Fails to keep records as required under this Article.
- (7) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books and records concerning motor fuel.
- (8) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (9) Fails to file a replacement bond or an additional bond as required under this Article.
- (10) Fails to show or give a shipping document as required under this Article.
- (11) Willfully refuses to allow a licensed distributor, a licensed exporter, or a licensed importer to defer payment of tax to the supplier, as required by G.S. 105-449.91.
- (12) Willfully refuses to allow a licensed distributor or a licensed importer to take the discount allowed by G.S. 105-449.93 when remitting tax to the supplier."

Sec. 43. G.S. 105-449.121(a) reads as rewritten:

"(a) What Must Be Kept. -- A person who is ~~required to submit a report or file a return under Part 4 of this Article~~ subject to audit under subsection (b) of this section must keep a record of all shipping documents or other documents used to determine ~~the information provided in the report or return,~~ information the person provides in a return or to determine the person's motor fuel transactions. The records must be kept for three years from the due date of the ~~report or return to which the records apply,~~ apply or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction."

Sec. 44. G.S. 105-449.130 reads as rewritten:

"§ 105-449.130. *Definitions.*

The following definitions apply in this Article:

- (1) Alternative fuel. -- A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
- (2) Bulk-end user. -- A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (2) (3) Highway. -- Defined in G.S. 20-4.01(13).
- (3) (4) Highway vehicle. -- Defined in G.S. 105-449.60.
- (4) (5) Motor fuel. -- Defined in G.S. 105-449.60.
- (5) (6) Motor fuel rate. -- Defined in G.S. 105-449.60.
- (7) Provider of alternative fuel. -- A person who does one or more of the following:
 - a. Acquires alternative fuel for sale or delivery to a bulk-end user or a retailer.
 - b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a bulk-end user or a retailer to operate a highway vehicle.
 - c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.
 - d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.
- (8) Retailer. -- A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

Sec. 45. G.S. 105-449.131 reads as rewritten:

"§ 105-449.131. *List of persons who must have a license.*

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A provider of alternative fuel.
- (2) A bulk-end user of alternative fuel that uses part or all of the fuel in a highway vehicle. user.

- (3) ~~A retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle, retailer."~~

Sec. 46. G.S. 105-449.134 reads as rewritten:

"§ 105-449.134. *Denial or cancellation of license.*

The Secretary may deny an application for a license or cancel a license under this Article for the same reasons that the Secretary ~~can~~ may deny an application for a license or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling a license applies to the cancellation of a license under this Article."

Sec. 47. G.S. 105-449.136 reads as rewritten:

"§ 105-449.136. *Tax on alternative fuel.*

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S. 105-449.88(2), (3), and (4) apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

Sec. 48. G.S. 105-449.138 reads as rewritten:

"§ 105-449.138. *Requirements for bulk-end users and retailers.*

(a) ~~Reports. Informational Return.~~ -- A bulk-end user of alternative fuel that ~~uses part or all of the fuel in a highway vehicle~~ and a retailer of alternative fuel that ~~sells part or all of the fuel for use in a highway vehicle~~ must file a quarterly report informational return with the Secretary. A quarterly ~~report return~~ covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the ~~report return~~.

The ~~report return~~ must give the following information and any other information required by the Secretary:

(1) The amount of alternative fuel received during the quarter.

(2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. -- A storage facility used by a bulk-end user of alternative fuel or a retailer of alternative fuel must be marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle."

Sec. 49. G.S. 105-449.139 is amended by adding the following subsection to read:

"(c) Lists. -- The Secretary must give a list of licensed alternative fuel providers to each licensed bulk-end user and licensed retailer. The Secretary must also give a list of licensed bulk-end users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the

list. The Secretary must send an annual update of a list to each license holder, as appropriate."

Sec. 50. G.S. 105-449.57 reads as rewritten:

"§ 105-449.57. Cooperative agreements between ~~states~~ jurisdictions.

The Secretary may enter into cooperative agreements with other states jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other provisions as will facilitate the administration of the agreement.

In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another state jurisdiction any information in the Department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose to officials of another state jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each state jurisdiction to audit the records of motor carriers based in the state jurisdiction to determine if the gasoline or other motor fuel taxes due each state jurisdiction are properly reported and paid. Each state jurisdiction shall forward the findings of the audits performed on motor carriers based in the state jurisdiction to each state jurisdiction in which the carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this State who have taxable use of gasoline or other motor fuels in this State, the Secretary may utilize the audit findings received from another state jurisdiction as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest shall be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any provision to the contrary is void."

Sec. 51. G.S. 105-236(10) is amended by adding a new subpart to read:

"c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due,

there shall be assessed as a tax a penalty of fifty dollars (\$50.00)."

Sec. 52. G.S. 105-253(b) reads as rewritten:

"(b) Each responsible corporate officer is personally and individually liable for all of the following:

- (1) All sales and use taxes collected by a corporation upon taxable transactions of the corporation.
- (2) All sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the corporation pursuant to the provisions of ~~Article 36 and Article 36A~~ 36C and 36D of Subchapter V of this ~~Chapter~~ Chapter and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state.

The liability of the responsible corporate officer is satisfied upon timely remittance of the tax ~~to the Secretary~~ by the corporation. If the tax remains unpaid by the corporation after it is due and payable, the Secretary may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term 'responsible corporate officer' includes the president and the treasurer of the corporation and any other officers assigned the duty of filing tax returns and remitting taxes ~~to the Secretary~~ on behalf of the corporation. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency shall apply to any assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation."

Sec. 53. G.S. 119-15 reads as rewritten:

"§ 119-15. *Definitions that apply to Article.*

The following definitions apply in this Article:

- (1) Alternative fuel. -- Defined in G.S. 105-449.130.
- (2) Gasoline. -- Defined in G.S. 105-449.60.
- (3) Kerosene. -- Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.
- (4) Kerosene distributor. -- A person who acquires kerosene from any of the following for subsequent sale:
 - a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
 - b. A kerosene supplier.
 - c. Another kerosene distributor.
- (5) Kerosene supplier. -- A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the

General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

~~(4)~~ (6) Motor fuel. -- Defined in G.S. 105-449.60.

~~(5)~~ (7) Person. -- Defined in G.S. 105-229.90."

Sec. 54. G.S. 119-16.2 reads as rewritten:

"§ 119-16.2. *Application for license.*

(a) When Required. -- A person may not engage in business as a kerosene distributor supplier unless the person is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene supplier license issued under this section. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene distributor license. A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Application. -- To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars (\$20,000). An applicant must give the Secretary the same information the applicant would be required to give under Part 2 of Article 36C of Chapter 105 of the General Statutes if the applicant were applying for a license under that Part.

(c) General. -- A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under Part 2 of Article 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a license issued under that Part. A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 55. G.S. 119-18(a) reads as rewritten:

"(a) Tax. -- An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all ~~kerosene, motor fuel, and alternative fuel~~ of the following fuel, regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes:

(1) Motor fuel that is not dyed diesel fuel.

(2) Dyed diesel fuel used to operate a highway vehicle.

(3) Alternative fuel used to operate a highway vehicle.

(4) Kerosene.

The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of

Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a ~~distributor required to be licensed under G.S. 119-16.2~~ supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report ~~by a distributor required to be licensed under G.S. 119-16.2~~ is due by the ~~20th~~ 22nd of each month and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by the ~~distributor during the preceding month~~, a kerosene supplier."

Sec. 56. The following sections in Article 3 of Chapter 119 of the General Statutes are repealed:

G.S. 119-40 Manufacturers to notify Commissioner of shipments.

G.S. 119-41 Persons engaged in transporting are subject to inspection laws.

G.S. 119-44 Registration of exclusive industrial users of naphthas and coal tar solvents.

Sec. 57. Sections 21 and 32 of this act become effective July 1, 1997. The remaining sections of this act become effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1317

CHAPTER 648

AN ACT TO PROVIDE FOR THE CONTINUED SOLVENCY OF THE COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND AND TO MAKE OTHER CHANGES TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Temporary suspension of cleanups pending adoption of risk-assessment rules -- (a) The definitions set out in G.S. 143-215.94A apply to this section.

(b) The Department shall classify the impact of each known discharge or release of a petroleum product from an underground storage tank as either a Class AB impact or a Class CDE impact. The Department shall make the classification on the basis of information currently known by the Department or provided to the Department as required by law. The Department shall revise the classification as additional information is received. The impact of a discharge or release is a Class CDE impact unless and until it is classified as a Class AB impact. A discharge or release has a Class AB impact if and only if any of the following apply:

- (1) A water supply well is contaminated.
- (2) Petroleum vapor is present in a confined space.
- (3) A water supply well is located within 1,500 feet of the discharge, release, or known extent of contamination and there is a user of water from any water supply well located within 1,500 feet of the

discharge, release, or known extent of contamination who is not served by an existing public water supply.

(4) The discharge or release results in a violation of drinking water standards set out in rules adopted by the Commission for Health Services under G.S. 130A-315 in a treated surface water supply.

(5) The discharge or release poses an imminent danger to public health, public safety, or the environment.

(c) The Department shall give notice of the classification of the impact of a cleanup of a discharge or release from a petroleum underground storage tank by publishing the classification in the North Carolina Register. To the maximum extent practical, the Department shall give notice of the classification of the impact of a cleanup of a discharge or release from a petroleum underground storage tank by first-class mail to either the owner, operator, or other person responsible for the cleanup as shown on records maintained by the Department at the address on file with the Department.

(d) The Commission shall not require the cleanup of a discharge or release from a petroleum underground storage tank having a Class CDE impact except that an owner, operator, or other person responsible for the cleanup of a discharge or release from a petroleum underground storage tank shall:

(1) Take immediate action to prevent any further release or discharge of petroleum from the underground storage tank; identify and mitigate any fire, explosion, or vapor hazard; and remove any free petroleum product.

(2) Meet applicable requirements of 40 Code of Federal Regulations § 280.50 through § 280.53 and § 280.60 through § 280.64 (1 July 1995 Edition).

(3) Submit any information that the Department may require to classify the impact of the discharge or release pursuant to this section.

(e) If the impact of a discharge or release is classified as having a Class CDE impact, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under Part 2A of Article 21A of Chapter 143 of the General Statutes from either the Commercial Fund or Noncommercial Fund unless:

(1) The costs are incurred to comply with subsection (d) of this section.

(2) The payment or reimbursement is for costs that were incurred prior to notification that the impact of the discharge or release has been classified as Class CDE by the Department.

(3) The payment or reimbursement is for costs that were incurred for a discharge or release the impact of which is subsequently classified as a Class AB impact by the Department.

(4) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner, operator, or landowner.

(5) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

- (6) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.
 - (7) The Department approves continuation of the cleanup as provided in subsection (f) of this section.
 - (f) An owner, operator, or landowner who is responsible for the cleanup from a discharge or release who is not eligible to have the costs of the cleanup paid or reimbursed because the impact of the discharge or release has been classified as a Class CDE impact may petition the Department for continued eligibility for payment or reimbursement. The Department shall authorize continuation of the cleanup only if the owner, operator, or landowner responsible for the cleanup establishes that:
 - (1) The owner, operator, or landowner responsible for cleanup has incurred costs that are reimbursable under G.S. 143-215.94E(e), or that would be reimbursable if those costs were in excess of the costs for which the owner, operator, or landowner is responsible under G.S. 143-215.94B, 143-215.94D, or 143-215.94E.
 - (2) The owner, operator, or landowner either has paid or will pay all costs for which the owner, operator, or landowner is responsible.
 - (3) Discontinuation of the cleanup will result in a hardship. For purposes of this subdivision, a hardship exists if and only if the discontinuation of the cleanup will prevent the conveyance through a bona fide sale for value of the property where the discharge or release occurred. The owner, operator, or landowner responsible for the cleanup shall present a contract of sale executed on or before 31 December 1996 that is contingent on continuation of the cleanup. If the conveyance of the property does not occur within 120 days after the contract of sale is executed or under the terms of the contract for any reason, the Department shall discontinue eligibility under this subsection.
 - (g) Except for costs incurred to comply with subsection (d) of this section, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under Part 2A of Article 21A of Chapter 143 of the General Statutes from either the Commercial Fund or the Noncommercial Fund for a discharge or release that is discovered on or after the date this act is ratified until the impact of the release has been classified as provided in subsection (b) of this section.
- Sec. 2. G.S. 143-215.94C(a) reads as rewritten:
- "(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:
- (1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity -- ~~one hundred fifty dollars (\$150.00).~~ two hundred dollars (\$200.00).

- (2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity -- ~~two hundred twenty-five dollars (\$225.00),~~ three hundred dollars (\$300.00)."

Sec. 3. G.S. 143-215.94E is amended by adding a new subsection to read:

"(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars (\$5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars (\$1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b)."

Sec. 4. G.S. 143-215.94E(e) reads as rewritten:

"(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the

previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b) and G.S. 143-215.94D(b1). The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this subsection within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes."

Sec. 5. The Department of Environment, Health, and Natural Resources shall study options for privatization of the leaking petroleum underground storage cleanup program. The Department shall pay any costs associated with this study from funds otherwise available to the Department for the implementation of Part 2A and Part 2B of Article 21A of Chapter 143 of the General Statutes. The Department shall report its findings and recommendations, including any proposed legislation, to the Environmental Review Commission on or before 1 November 1996.

Sec. 6. The Environmental Management Commission shall publish the text of the proposed rule required by G.S. 143-215.94V(b) as soon as possible and no later than 1 January 1997. The Environmental Management Commission shall adopt a rule to implement the requirements of G.S. 143-215.94V(b) as soon as possible and no later than 1 October 1997.

Sec. 7. The Revisor of Statutes shall set out Section 1 of this act as a note to G.S. 143-215.94V.

Sec. 8. Nothing in this act shall be construed to waive the sovereign immunity of the State for any action or omission of the State or of any agent or employee of the State in implementing the provisions of this act. The provisions of Article 31 of Chapter 143 of the General Statutes, Tort Claims against State Departments and Agencies, shall not apply to any action or omission of the State or of any agent or employee of the State in implementing the provisions of this act. There shall be no liability for negligence on the part of the State or of any agent or employee for any action or omission in implementing the provisions of this act.

Sec. 9. Sections 1 and 7 of this act become effective 30 days after the date this act is ratified and expires on the date that a temporary or permanent rule adopted under G.S. 143-215.94V(b) become effective as provided in G.S. 150B-21.3. Section 2 of this act becomes effective 1 January 1997. Section 3 of this act becomes effective upon ratification, applies retroactively to any discharge or release that is discovered and reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October 1997.

Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this act become effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1239

CHAPTER 649

AN ACT TO EXEMPT FROM SALES AND USE TAX FREE SAMPLES OF PRESCRIPTION DRUGS DISTRIBUTED BY THE MANUFACTURER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(13b) Prescription drugs distributed free of charge by the manufacturer, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs."

Sec. 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(11a) 'Prescription drug' means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: 'Caution: Federal law prohibits dispensing without prescription'."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 838

CHAPTER 650

AN ACT TO EXEMPT THE YOUNG MEN'S CHRISTIAN ASSOCIATION AND THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION FROM THE LICENSURE REQUIREMENTS OF THE NORTH CAROLINA CHARITABLE SOLICITATIONS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131F-3 reads as rewritten:

"§ 131F-3. Exemptions.

The following are exempt from the provisions of this Chapter:

- (1) Any person who solicits charitable contributions for a religious institution.
- (2) Solicitation of charitable contributions by the federal, State, or local government, or any of their agencies.
- (3) Any person who receives less than twenty-five thousand dollars (\$25,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser, or solicitor.

- (4) Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body, and any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes, and any foundation or department having an established identity with any of these educational institutions.
- (5) Any hospital licensed pursuant to Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes and any foundation or department having an established identity with that hospital if the governing board of the hospital, authorizes the solicitation and receives an accounting of the funds collected and expended.
- (6) Any noncommercial radio or television station.
- (7) A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14).
- (8) A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor.
- (9) An attorney, investment counselor, or banker who advises a person to make a charitable contribution.
- (10) A volunteer fire department, rescue squad, or emergency medical service.
- (11) A Young Men's Christian Association or a Young Women's Christian Association."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1174

CHAPTER 651

AN ACT TO ALLOW ROCKINGHAM COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION AND TO CLARIFY THE FILING DATE FOR MEMBERS OF THE ROCKINGHAM COUNTY CONSOLIDATED BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) **Board of Education May Contract for Construction.** -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) **Scope.** -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Greene, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Union, Wake, and Watauga Counties."

Sec. 2. The filing date for candidates for the Rockingham County Consolidated Board of Education is the same as for municipal nonpartisan elections as referenced in G.S. 163-294.2(c).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1270

CHAPTER 652

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH SPEED LIMITS UP TO SEVENTY MILES PER HOUR ON DESIGNATED PARTS OF CONTROLLED ACCESS HIGHWAYS AND TO PROVIDE FOR SUSPENSION OF THE LICENSE OF A PERSON DRIVING IN EXCESS OF 80 MILES PER HOUR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141 reads as rewritten:

"§ 20-141. *Speed restrictions.*

(a) No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

(1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.

- (2) Fifty-five miles per hour outside municipal corporate limits for all ~~vehicles vehicles, except on rural Interstate Highways where the speed limit has been raised pursuant to G.S. 20-141(d)(2), and~~ except for school buses and school activity buses.

(c) Except while towing another vehicle, or when an advisory safe-speed sign indicates a slower speed, or as otherwise provided by law, it shall be unlawful to operate a passenger vehicle upon the interstate and primary highway system at less than the following speeds:

- (1) Forty miles per hour in a speed zone of 55 miles per hour.
- (2) Forty-five miles per hour in a speed zone of 60 miles per hour or greater.

These minimum speeds shall be effective only when appropriate signs are posted indicating the minimum speed.

- (d) (1) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that any speed allowed by subsection (b) is greater than is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or ~~other any part of a~~ controlled-access highway (either inside or outside the corporate limits of a municipality), the Department of Transportation shall determine and declare a reasonable and safe speed limit.

- (2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or ~~other any part of a~~ controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour. ~~The Department of Transportation shall set the speed limit not to exceed that allowed by applicable Federal law on any part of the Interstate Highway System that they deem to be safe.~~

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(e) Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected.

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is

reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality.

(g) Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Department of Transportation or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the Department of Transportation and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The Department of Transportation shall have authority to designate and appropriately mark certain highways of the State as truck routes.

~~(j) Any person convicted of violating this section by operating a vehicle on a street or highway in excess of 55 miles per hour and at least 15 miles per hour over the legal limit while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class 1 misdemeanor. A person who does one of the following while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class 1 misdemeanor:~~

(1) Drives a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal limit.

(2) Drives a vehicle in excess of 80 miles per hour.

(j1) A person who drives a vehicle on a highway at a speed that is either more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred or over 80 miles per hour is guilty of a Class 2 misdemeanor.

(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 is responsible for an infraction and is required to pay a penalty of one hundred dollars (\$100.00). A 'highway work zone' is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone.

~~(k) The maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour except for those portions of the Interstate Highway System where the Department of Transportation sets a higher speed limit pursuant to subdivision (d)(2) of this section.~~

(l) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway.

(m) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the operator of a vehicle from the duty to decrease speed as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, and to avoid injury to any person or property.

(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or the range of his vision shall not be held negligence per se or contributory negligence per se."

Sec. 2. G.S. 20-16.1(a) reads as rewritten:

"(a) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 30 days the license of any driver without preliminary hearing on receiving a record of such the driver's conviction of either (i) exceeding by more than 15 miles per hour the speed limit, either within or outside the corporate limits of a municipality, if such the person was also driving at a speed in excess of 55 miles per hour at the time of the

~~offense, offense, or (ii) driving at a speed in excess of 80 miles per hour at the time of the offense."~~

Sec. 3. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1286

CHAPTER 653

AN ACT TO EXPAND THE MEMBERSHIP OF THE FORESTRY COUNCIL OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AND REDEFINE ITS RESPONSIBILITIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-308 reads as rewritten:

"§ 143B-308. *Forestry Council -- creation; powers and duties.*

There is hereby created the Forestry Council of the Department of Environment, Health, and Natural Resources. The Forestry Council shall have the following functions and duties:

- (1) To advise the Secretary of Environment, Health, and Natural Resources with respect to all matters concerning the conservation and development of both state-owned and privately-owned forests in the State, including, the promotion of a more profitable use of forestlands; protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:

- a. Profitable use of the State's forests consistent with the principles of sustained productivity.
- b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
- c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

- (2) To undertake such studies and make such reports to the Secretary of Environment, Health, and Natural Resources as the Secretary may direct; and

To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

- (3) To advise the Secretary of Environment, Health, and Natural Resources upon any matter the Secretary may refer to it.
To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

- (4) To undertake any other studies, make any reports, and advise the Secretary of Environment, Health, and Natural Resources on any matter as the Secretary may direct."

Sec. 2. G.S. 143B-309 reads as rewritten:

"§ 143B-309. Forestry Council -- members; ~~chairman~~ chairperson; selection; removal; compensation; ~~quorum; services.~~ quorum.

(a) The Forestry Advisory Council of the Department of Environment, Health, and Natural Resources shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: three members shall represent wood-using industries; two members shall represent farmers or other private, nonindustrial forest landowners; two members shall represent forestry interests not primarily concerned with the production of commercial timber, those interests to include but not be limited to watershed protection and environmental protection; one member who shall represent forestry organizations; one member who shall represent banking and financial interests; and two members who shall represent the general public. 18 members appointed as follows:

- (1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.
- (2) One person who represents the secondary wood-using industry.
- (3) One person who represents the logging industry.
- (4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.
- (5) Three persons who are members of statewide environmental or wildlife conservation organizations.
- (6) One consulting forester.
- (7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
- (8) One person who represents a banking institution that manages forestland.
- (9) One person with expertise in urban forestry.
- (10) One person with active experience in city and regional planning.

(b) The Governor shall appoint one person from categories (1) and (5), two persons from category (4), and the persons from categories (6), (7), (8), (9), and (10). The President Pro Tempore of the Senate shall appoint the person from category (2) and one person each from categories (1), (4), and (5). The Speaker of the House of Representatives shall appoint the person from category (3) and one person each from categories (1), (4), and (5). The Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall consult with one another to insure that each of the three geographic regions of the State are represented in appointments made to fill categories (1) and (4).

(c) The Governor shall designate one member of the Council to serve as ~~chairman~~ chairperson at the pleasure of the Governor.

(d) The initial members of the Council shall be appointed as follows: five members for two-year terms and six members for four-year terms. At the

~~end of the respective terms of office of the initial members of the Council, the appointments of all members shall be for terms of four years and until their successors are appointed and qualify. Members shall serve staggered terms of office of four years. The terms of office of members filling categories (1), (4), and (5) shall expire on 30 June of years that follow by one year those years that are evenly divisible by four. The terms of office of members filling categories (2), (3), (6), (7), (8), (9), and (10) shall expire on 30 June of years that follow by three years those years that are evenly divisible by four. Terms shall expire as provided by this subsection except that members of the Council shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term, term and shall be made by the appointing authority responsible for that category. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.~~

~~(c) The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973. The Governor shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the Governor. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.~~

~~(f) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.~~

~~(g) A majority of the Council shall constitute a quorum for the transaction of business.~~

~~(h) All clerical and other services required by the Council Council, including the support required to carry out studies it is requested to make, shall be supplied by the Secretary of Environment, Health, and Natural Resources."~~

Sec. 3. G.S. 143B-310 reads as rewritten:

"§ 143B-310. Forestry Council -- meetings.

~~The Forestry Council shall meet at least semiannually annually in October and at least three other times a year and may hold special meetings at any time and place within the State at the call of the chairman chairperson or upon the written request of at least a majority of the members. At least one meeting during each two-year period shall be held in the Mountains, Piedmont, and the Coastal Plain."~~

Sec. 4. Article 2B of Chapter 113 of the North Carolina General Statutes is repealed.

Sec. 5. The Forestry Council as it is constituted at the time this act becomes effective shall be replaced by the Forestry Council as it is reconstituted by this act. Persons who are members of the Forestry Council at the time this act becomes effective are eligible for appointment to the reconstituted Forestry Council. To provide for staggered terms, initial appointments to categories (2), (3), (6), (7), (8), (9), and (10), as provided in G.S. 143B-309(a), as amended by Section 2 of this act shall expire on 30 June 1999. Initial appointments to categories (1), (4), and (5), as provided

in G.S. 143B-309(a), as amended by Section 2 of this act, shall expire on 30 June 1997.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 282

CHAPTER 654

AN ACT TO ALLOW THE CITY OF ROCKINGHAM TO MAKE SATELLITE ANNEXATIONS OF LESS THAN AN ENTIRE SUBDIVISION WHEN THE PROPERTY IS DEVELOPED FOR COMMERCIAL OR INDUSTRIAL USE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(4) reads as rewritten:

"(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be ~~included~~, included, unless the area proposed for annexation is developed for commercial or industrial use."

Sec. 2. This act applies to the City of Rockingham only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 580

CHAPTER 655

AN ACT TO AMEND THE CHARTER OF THE CITY OF ALBEMARLE CONCERNING ASSESSMENTS FOR STREET IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 5.3 of the Charter of the City of Albemarle, being Chapter 259 of the 1979 Session Laws, reads as rewritten:

"Section 5.3. Alternative Method of Assessing the Cost of Installation of Street Improvements; Authority to Waive Street Assessments.

(a) In addition and as an alternative to the method provided in G.S. 160A-218 for assessing the costs of installing street improvements described in G.S. 160A-216(1) and (2), the City Council, in lieu of assessing the total cost of a particular project as provided in G.S. 160A-218, may annually between the first days of January and July of each year, determine the average cost of installing street improvements and, on the basis of such determination, may make assessments of such average cost during the following fiscal year beginning July 1. The average cost of such installation shall exclude labor cost but shall include the cost of materials of street improvements completed during the preceding calendar year. The City Council also may include the anticipated increase in materials costs based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such improvements shall not be made until after the particular assessment project has been completed. The purpose of this act is to distribute more equitably the cost of the installation

of street improvements throughout the City; to permit a property owner to know in advance what the cost of installation of street assessments benefiting his property will be; and to permit the most expeditious assessments of cost against property after completion of the installation of such street improvements. The actual cost of acquisition of rights-of-way also may be assessed as a part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation costs at the time of the completion of the project, such costs may be assessed separately when they are determined.

(b) The City Council is authorized and empowered to may waive the collection of street assessments owed to the City by Stanly County, the Stanly County Board of Education, and the Albemarle City School Administrative Unit."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 598

CHAPTER 656

AN ACT TO CREATE FIRE DISTRICTS IN SCOTLAND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The following fire districts are created in Scotland County:

FIRE TAX DISTRICT A CENTRAL SCOTLAND FIRE DISTRICT Served by the Laurinburg Fire Department

Beginning at a point (1) on U.S. Highway 15-501 north at its intersection with SR 1429; thence in a southeasterly direction to a point (2) on SR 1428, 1.0 miles north of SR 1420; thence in a southeasterly direction to a point (3) on U.S. Highway 15-401, 1.5 miles northeast of SR 1429, thence in a northeasterly direction along U.S. Highway 15-401 to a point (4) on U.S. 15-401, at its intersection with SR 1424; thence in a southeasterly direction along SR 1424 to a point (5) on SR 1424, with its intersection with SR 1425; thence in a southeasterly direction to a point (6) on SR 1427, 1.0 mile northeast of SR 1425; thence in a southeasterly direction to a point (7) on SR 1433, with its intersection with SR 1472; thence in a southerly direction along SR 1472 to a point (8) on SR 1472, at its intersection with SR 1434; thence in a southwesterly direction to a point (9) 1.0 miles northeast of point 10; thence in a southeasterly direction to a point (10) on SR 1434, 0.6 mile north of SR 1435; thence in a southwesterly direction to a point (11) on the Big Shoe Heel Creek; thence in a southerly direction along Big Shoe Heel creek to a point (12) on U.S. Highway 74 (by-pass), 1.0 mile west of SR 1436; thence in a southerly direction along the Big Shoe Heel Creek to a point (13) on SR 1369, 0.75 mile southeast of SR 1611; thence in a southerly direction along the Big Shoe Heel Creek to a point (14) on U.S. Highway 74 (business), 0.92 mile east of SR 1611; thence in a northwesterly direction along U.S. Highway 74 (business), to a

point (15) on U.S. Highway 74, at its intersection with SR 1611; thence in a northwesterly direction to a point (16) on U.S. Highway 74 (business), 0.4 mile southeast of its intersection with U.S. Highway 74 (by-pass) east, thence in a northwesterly direction along the south right-of-way property line of U.S. Highway 74 (business) to a point (17) at the intersection of U.S. Highway 74 (business) and U.S. Highway 74 (by-pass); thence in a southwesterly direction along the south right-of-way property line of U.S. Highway 74 (by-pass) to a point (18) at the Laurinburg City limits; thence following the Laurinburg City limits in a southerly and northerly direction to a point (19) at the west intersection of the Laurinburg City limits and U.S. Highway 74 (by-pass); thence in a northwesterly direction along the south right-of-way property line of U.S. Highway 74 (by-pass) to a point (20) at the intersection of U.S. Highway 74 (by-pass) and N.C. Highway 79; thence in a northwesterly direction along the south right-of-way property line of U.S. Highway 74 (by-pass) to a point (21) at the intersection of U.S. Highway 74 (by-pass) and U.S. Highway 74 (business); thence in a northwesterly direction to a point (22) of SR 1321, at its intersection with SR 1303; thence in a northeasterly direction to a point (23) on SR 1105, 0.75 northwest on SR 1321; thence in a northeasterly direction to a point (24) on SR 1319 at its intersection with SR 1323; thence in a northwesterly direction to the point of beginning, excluding all property within the City of Laurinburg.

FIRE TAX DISTRICT B
NORTH SCOTLAND FIRE DISTRICT
Served by the Wagram Fire Department

Beginning at a point (1) on SR 1400, 0.1 mile north of SR 1412; thence in a easterly direction to a point (2) on SR 1413, 1.5 miles northeast of SR 1400; thence in a easterly direction to a point (3) at the Lumber River; thence in a southerly direction along the Lumber River to a point (4) on U.S. Highway 15-401; thence in a southerly direction along the Lumber River to a point (5) on SR 1404; thence in a southerly direction along the Lumber River to a point (6) due east of point 7; thence due west to a point (7) on SR 1403, 2.8 miles south of SR 1418; thence in a southwesterly direction to a point (8) on SR 1407, and its intersection with SR 1403; thence in a westerly direction to a point (9) on SR 1426, 1.2 miles south of SR 1425; thence in a north to northwesterly direction along SR 1426 to a point (10) on SR 1426, at its intersection with SR 1425; thence in a southerly direction along SR 1425, to a point (11) on SR 1425, at its intersection with SR 1424; thence in a northwesterly direction along SR 1424 to a point (12) on SR 1424, at its intersection with U.S. Highway 15-401; thence in a southwesterly direction along U.S. Highway 15-401 to a point (13) on U.S. Highway 15-401, 0.4 mile south of SR 1424; thence in a northwesterly direction to a point (14) on SR 1405, at its intersection with SR 1428; thence in a northerly direction to a point (15) on SR 1326, 0.3 mile northwest of SR 1405; thence in a northeasterly direction 1.0 mile to a point (16) along the Laurinburg and Southern Railroad to SR 1423; thence northward 1.3 miles to a point (17) on SR 1416, 0.5 mile northwest of SR

1415; thence in a northwesterly direction 0.5 mile to a point (18) on SR 1415, at its intersection with SR 1416, excluding property on SR 1416 between this and the preceding point; thence in a northerly direction 1.7 miles to a point (19) on SR 1403, at its intersection with SR 1412; thence in a northeasterly direction to a point (20) on SR 1332, 0.6 mile northwest of SR 1412; thence in a northeasterly direction to the point of beginning; excluding property within the Town limits of Wagram.

**FIRE TAX DISTRICT C
WEST SCOTLAND FIRE DISTRICT**

Served by West Scotland Fire Department (Laurel Hill)

Beginning at a point (1) on SR 1001, 2.0 miles north of SR 1323; thence in a southeasterly direction to a point (2) on SR 1370, 0.4 mile east of SR 1001; thence in a southeasterly direction to a point (3) on SR 1337, 1.2 miles north of SR 1323; thence in a easterly direction to a point (4) on SR 1336, 1.2 miles north of SR 1323; thence in a westerly direction to a point (5) on SR 1324, 1.0 mile north of SR 1323, and being at its intersection of SR 1324 and SR 1345; thence in a southeasterly direction to a point (6) on U.S. Highway 15-501, at its intersection with SR 1429 and SR 1321; thence a southwesterly direction to a point (7) on SR 1319, at its intersection with SR 1323; thence in a southwesterly direction to a point (8) on SR 1105, 0.8 mile south of SR 1319; thence in a southerly direction to a point (9) on SR 1303, at its intersection with SR 1321; thence in a southerly direction to a point (10) on U.S. Highway 74, 0.5 mile southeast of SR 1321; thence in a southerly direction to a point (11) on N.C. Highway 79, at its intersection with SR 1119 and SR 1321; thence in a southerly direction to a point (12) on SR 1119, 0.9 mile south of N.C. Highway 79; thence in a westerly direction to a point (13) on SR 1128, at its intersection with N.C. Highway 79; thence in a northwesterly direction to a point (14) on SR 1128, at its intersection with SR 1129; thence in a northwesterly direction to a point (15) on SR 1148, at its intersection with SR 1149; thence in a northwesterly direction to a point (16) on SR 1167, at its intersection with SR 1150; thence in a northwesterly direction to a point (17) on SR 1157; at its intersection with SR 1145; thence in a northwesterly direction to a point (18) on SR 1126, at its intersection with Joe's Creek; thence in a northwesterly direction along Joe's Creek to a point (19) on SR 1155; thence in a northerly direction to a point (20) on U.S. Highway 74, 0.1 mile west of SR 1155; thence in a northeasterly direction to a point (21) on SR 1347, at its intersection with SR 1323; thence in a northeasterly direction to a point (22) on SR 1339, at its intersection with SR 1340; thence in a easterly direction to the point of beginning.

**FIRE TAX DISTRICT D
SOUTHWEST SCOTLAND FIRE DISTRICT**

Served by the Gibson Fire Department

Beginning at a point (1) on the North Carolina and South Carolina State line 0.3 mile northwest of SR 1161; thence in a northerly direction to a

point (2) on SR 1162, at its intersection with SR 1163, thence in a northerly direction to a point (3) on N.C. Highway 381, at its intersection with SR 1151; thence in a northeasterly direction along SR 1151 to a point (4) on SR 1151, at its intersection with SR 1126; thence in a southeasterly direction along SR 1126 to a point (5) on SR 1126, at its intersection with SR 1157; thence in a easterly direction along SR 1126 to a point (6) on SR 1126, at its intersection with the bridge over Joe's Creek; thence in a southeasterly direction to a point (7) on SR 1152 at its intersection with SR 1145; thence in a southeasterly direction to a point (8) on SR 1150. at its intersection with SR 1167; thence in a southeasterly direction to a point (9) on SR 1148, at its intersection with SR 1149; thence in a southeasterly direction to a point (10) on SR 1128, at its intersection with SR 1129; thence in a southeasterly direction to a point (11) on N.C. Highway 79, at its intersection with SR 1128, excluding all property on SR 1128 between this and the preceding point; thence in a easterly direction to a point (12) on SR 1119, 1.0 mile northwest of its intersection with SR 1116; thence in a southwesterly direction to a point (13) on 1108 at its intersection with SR 1120; thence in a southeasterly direction to a point (14) on U.S. Highway 15-501, at the bridge over Gum Swamp Creek; thence in a southwesterly direction along U.S. Highway 15-501 to a point (15) on U.S. Highway 15-501, at its intersection with SR 1101; thence in a southwesterly direction along SR 1101 to a point (16) on SR 1101, at its intersection with SR 1100; thence in a southwesterly direction along SR 1101 to a point (17) on SR 1101, at its intersection with SR 1102; thence in a southwesterly direction along SR 1101 to a point (18) on SR 1101, at its intersection with the North Carolina and South Carolina State line; thence in a northwesterly direction along the North Carolina and South Carolina State line; to the point of beginning, excluding all property within the Town of Gibson.

FIRE TAX DISTRICT E
EAST SCOTLAND FIRE DISTRICT
Served by the Stewartsville Fire Department

Beginning at a point (1) on U.S. Highway 75 (business), at its intersection with SR 1611; thence in a southeasterly direction to a point (2) on U.S. Highway 74, at its intersection with Big Shoe Heel Creek; thence in a southeasterly direction along the Big Shoe Heel Creek to a point (3) on SR 1612; thence in a southeasterly direction along the Big Shoe Heel Creek to a point (4) on the Scotland and Robeson County line; thence in a southwesterly direction along the Scotland and Robeson County line to a point (5) on SR 1611; thence in a southwesterly direction along the Scotland and Robeson County line to a point (6) on SR 1617; thence in a southwesterly direction along the Scotland and Robeson County line to a point (7) on U.S. Highway 15-501; thence in a southwesterly direction along the Scotland and Robeson County line to a point (8) on SR 1616; thence in a southwesterly direction along the Scotland and Robeson County line to a point (9), 1.0 mile southwest of SR 1616; thence in a southwesterly direction to point (10) on SR 1623, 1.0 mile southeast from SR 1624; thence in a westerly direction to a point (11) on SR 1624, 1.0 mile

southwest of SR 1623; thence in a northwesterly direction to a point (12) on SR 1622, at its intersection with the North Carolina and South Carolina line; thence in a northwesterly direction along the North Carolina and South Carolina line to a point (13) on SR 1619, at its intersection with Gum Swamp Creek; thence in a northerly direction along the Gum Swamp Creek to a point (14); thence in a northeasterly direction to a point (15) on SR 1615, 0.8 mile northwest of its intersection with SR 1621; thence in a northeasterly direction to a point (16) on U.S. Highway 15-501, at its intersection with SR 1614; thence in a northeasterly direction to a point (17) on SR 1601, at its intersection with SR 1609; thence in a southeasterly direction to a point (18) on SR 1609, at its intersection with SR 1603; thence in a northeasterly direction to the point of beginning.

FIRE TAX DISTRICT F
SOUTH SCOTLAND FIRE DISTRICT
Served by the Laurinburg Fire Department

Beginning at a point (1) on U.S. Highway 74 (by-pass) east, at its intersection with U.S. Highway 74 (business); thence in a southeasterly direction to a point (2) on U.S. Highway 74 (business), 0.4 mile southeast of its intersection with U.S. Highway 74 (by-pass), excluding all property on U.S. Highway 74 (business), between this and the preceding point; thence in a southeasterly direction to a point (3) on U.S. Highway 74 (business), at its intersection with SR 1611; thence in a southwesterly direction to a point (4) on SR 1603 at its intersection with SR 1609; thence in a westerly direction to a point (5) on SR 1601 at its intersection with SR 1609, excluding all property on SR 1609 between this and the preceding point; thence in a southwesterly direction to a point (6) on U.S. Highway 15-501, at its intersection with SR 1614; thence in a southwesterly direction to a point (7) on SR 1615, 1.1 miles southeast of its intersection with SR 1614; thence in a southwesterly direction to a point (8) on SR 1614, at its intersection with SR 1628; thence in a northwesterly direction to a point (9) on U.S. Highway 15-401, 0.45 mile southwest of SR 1628; thence in a northeasterly direction along U.S. Highway 15-401 to a point (10) on U.S. Highway 15-401, at its intersection with the bridge over Gum Swamp Creek; thence in a northwesterly direction to a point (11) on SR 1108, at its intersection with SR 1120; thence in a northwesterly direction to a point (12) on SR 1119, 1.0 mile northwest of its intersection with SR 1116; thence in a northwesterly direction to a point (13) on N.C. Highway 79, at its intersection with SR 1119, excluding all property on SR 1119, between this and the preceding point; thence in a northeasterly direction to a point (14) on U.S. Highway 74 (business) at its intersection with U.S. Highway 74 (by-pass); thence in a southeasterly direction along the south right-of-way of U.S. Highway 74 (by-pass) to the Laurinburg City limits; thence along the Laurinburg City limits and the south right-of-way of U.S. Highway 74 (by-pass) to the point of beginning.

FIRE TAX DISTRICT G
501 SCOTLAND FIRE DISTRICT

Served by Springhill Volunteer Fire Department

Beginning at a point (1) on U.S. Highway 15-501, at its intersection with SR 1319 and SR 1405; thence in a easterly direction to a point (2) on SR 1428, 1.2 miles south of SR 1405; thence in a northwesterly direction to a point (3) on SR 1405, at its intersection with SR 1428; thence in a northwesterly direction to a point (4) where the Laurinburg and Southern Railroad and SR 1326 intersect; thence northeast 1.0 mile to a point (5) along the Laurinburg and Southern Railroad to SR 1423; thence northward 1.3 miles to a point (6) on SR 1416, 0.5 mile northwest of SR 1415; thence in a northwesterly direction 0.5 mile, to a point (7) on SR 1415, at its intersection with SR 1416; thence in a northerly direction 1.7 miles to a point (8) on SR 1403, at its intersection with SR 1412; thence in a northeasterly direction to a point (9) on SR 1332, 2 miles southeast of U.S. Highway 15-501; thence in a northeasterly direction to a point, (10) on SR 1400, 0.1 mile north of SR 1412; thence in a northwesterly direction to a point (11) on U.S. Highway 15-501, at its intersection with SR 1331; thence in a southwesterly direction to a point (12) on SR 1332, .15 mile north of SR 1331; thence in a southwesterly direction to a point (13) on SR 1328, at its intersection with SR 1341; thence in a southerly direction to a point (14) on SR 1345, 1.0 mile north of SR 1337; thence in a southerly direction to a point (15) on SR 1337, 1.0 mile south of SR 1345; thence in a southeasterly direction to a point (16) on SR 1336, 0.4 mile south of SR 1345; thence in a southeasterly direction to a point (17) on SR 1324, at its intersection with SR 1345; thence in a southeasterly direction to the point of beginning.

FIRE TAX DISTRICT H
QUEHEEL FIRE DISTRICT

Beginning at a point (13) on the Scotland and Robeson County line at its intersection with the Big Shoe Heel Creek; thence in a northwesterly direction along the Big Shoe Heel Creek to a point (14) on SR 1612; thence in a northwesterly direction along the Big Shoe Heel Creek to a point (15) on U.S. Highway 74 (business), 0.92 mile east of SR 1611; thence in a northerly direction along the Big Shoe Heel Creek to a point (16) on SR 1369, 0.75 mile southeast of SR 1611; thence in a northerly direction along the Big Shoe Heel Creek to a point (17) on U.S. Highway 74 (by-pass), 1.0 mile west of SR 1436; thence in a northeasterly direction along the Big Shoe Heel Creek to a point (18) on the Big Shoe Heel Creek, southwest of point (19); thence in a northeasterly direction to a point (20), 1.0 mile northwest of point 19; thence in a northeasterly direction to a point (21) on SR 1434, at its intersection with SR 1472; thence in a northeasterly direction to a point (22) on SR 1407, 0.6 mile southeast of its intersection with SR 1434; thence in a northeasterly direction to a point (23) on the Lumber River, 2 miles north of N.C. Highway 71.

Sec. 2. For the purpose of imposing taxes, the fire districts created in Section 1 of this act shall be considered Rural Fire Protection Districts authorized by Article 3A of Chapter 69 of the General Statutes and taxes may be imposed pursuant to G.S. 69-25.4.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 662

CHAPTER 657

AN ACT TO ALLOW RICHMOND COUNTY TO CREATE FIRE PROTECTION DISTRICTS IN WHICH FIRE PROTECTION IS FUNDED BY FEES RATHER THAN TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-236. Fee-supported fire districts.

(a) Request for Fee-supported District. -- A county may establish a fee-supported fire response district in any one or more of the following circumstances:

- (1) Upon receipt by the county of a written request to create a district signed by at least two-thirds of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.
- (2) Upon receipt by the county of a petition requesting creation of a district signed by at least fifteen percent (15%) of the resident freeholders living in an area in the county and describing the area to be designated as the district.
- (3) Whether or not a written request or petition is made pursuant to subdivisions (1) or (2) of this subsection, upon the board of commissioners' own initiative.

(b) Creation of Fee-supported District. -- A fee-supported fire district shall be created by adoption of a resolution by the board of commissioners in a regularly scheduled meeting having been preceded by a public hearing held not less than 10 days prior to nor more than 45 days prior to the date of the meeting when the vote is to be taken. The public hearing must have been advertised at least once, and not less than 10 days before date of the hearing, in a daily newspaper of prominent circulation in the county. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The proposed district maps shall be available for public inspection at the hearing and in the office of the clerk to the board for the entire period of this procedure and shall be published in a daily newspaper of prominent circulation in the county along with the advertisement of the public hearing.

The resolution creating the fee-supported district shall set forth the boundaries of the district and shall impose annual fees for the provision of fire protection services within the district. The district may not include any area that is within (i) a tax-supported fire district established under Article 3A of Chapter 69 of the General Statutes; (ii) a county fire service district established under Article 16 of this Chapter for fire protection purposes; or (iii) another fee-supported fire district. The district may not include any

area that is within the corporate limits of a municipality unless the governing body of the municipality agrees to the inclusion.

(c) Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. These classes shall be as follows:

- (1) A single-family dwelling or manufactured home, and appurtenant structures, plus up to five acres of surrounding land.
- (2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured home. The fee on this class of property may not exceed \$.50 (50 cents) per acre per year. The county may establish a minimum fee for unimproved land of five dollars (\$5.00) per year.
- (3) An animal production or horticultural operation.
- (4) A commercial facility other than an animal production or horticultural operation.
- (5) A multiple-family dwelling.
- (6) Any other class of property selected by the county.

(d) Billing of Fees. -- The county may include a fee imposed under this section on the property tax bill for the real property on which the fee is imposed.

(e) Use of Fees. -- The county shall credit the fees collected within the district to a separate fund to be used only to furnish fire protection in the district. The board of commissioners shall administer the fund to provide fire protection by one or more of the following methods:

- (1) Contracting with any municipality or any incorporated nonprofit volunteer or community fire department.
- (2) Furnishing fire protection itself if it maintains an organized fire department.
- (3) Establishing a fire department in the district.

(f) Audit of Fire Department. -- If the county contracts with a fire department to provide fire protection services in a fee-supported fire district, the fire department shall prepare an annual budget based on anticipated revenues and shall submit the budget to the county for processing and approval through the county's regular budget procedure. Upon request of the county, the fire department shall make quarterly or semiannual reports to the county detailing its revenues, expenditures, and activities. The county may audit the fire department's financial records upon reasonable notice to the fire department.

(g) Extension of Area of District. -- The county may by resolution annex to any fee-supported fire district any territory that it could include in a new district under subsection (c) upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and
- (2) The area to be annexed requires the services of the district.

The area of any fee-supported fire district may be increased by including within the boundaries of the district any adjoining territory lying within a municipality if the territory is not already included in another fire protection district, and both the municipal governing body and the county commissioners of the county in which the district is located agree by resolution to the inclusion.

(h) Abolition of District. -- Upon finding that there is no longer a need for a given fee-supported fire district, the board of commissioners may repeal the resolution establishing the district and thus abolish the district."

Sec. 2. This act applies to Richmond County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1150

CHAPTER 658

AN ACT TO CONFORM THE LAW GOVERNING SETOFFS WITH THE LAW GOVERNING THE RECOVERY OF PREMIUMS OWED INSURERS AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-30-160(b)(4) is repealed.

Sec. 2. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1151

CHAPTER 659

AN ACT TO LESSEN THE REQUIREMENT OF INSURANCE COMPANIES TO MAINTAIN TRUST ACCOUNTS OR OBTAIN LETTERS OF CREDIT OR GUARANTY BONDS AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section I. G.S. 58-7-162(6) reads as rewritten:

"(6) All premiums in the course of collection not more than 90 days past due, excluding commissions payable thereon, due from any person that solely or in combination with the person's affiliates owes the insurer an amount that equals or exceeds five percent (5%) of the insurer's total premiums in course of collection, surplus as regards policyholders, but only if:

a. The premiums collected by the person or affiliates and not remitted to the insurer are held in a trust account with a bank or other depository approved by the Commissioner. The funds shall be held as trust funds and may not be commingled

with any other funds of the person or affiliates. Disbursements from the trust account may be made only to the insurer, the insured, or, for the purpose of returning premiums, a person that is entitled to returned premiums on behalf of the insured. A written copy of the trust agreement shall be filed with and approved by the Commissioner before becoming effective. The Commissioner shall disapprove any trust agreement filed under this sub-subdivision that does not assure the safety of the premiums collected. The investment income derived from the trust may be allocated as the parties consider to be proper. The person or affiliates shall deposit premiums collected into the trust account within 15 business days after collection; or

- b. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, an unexpired, clean, irrevocable letter of credit, payable to the insurer, issued for a term of no less than one year and in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the person or affiliates. The letter of credit shall be issued under arrangements satisfactory to the Commissioner and the letter shall be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing satisfactory to the Commissioner; or
- c. The person or affiliates shall provide to the insurer, and the insurer shall maintain in its possession, evidence that the person or affiliates have purchased and have currently in effect a financial guaranty bond, payable to the insurer, issued for a term of not less than one year and that is in conformity with the requirements set forth in this sub-subdivision, the amount of which equals or exceeds the liability of the person or affiliates to the insurer, at all times during which the financial guaranty bond is in effect, for the premiums collected by the person or persons. The financial guaranty bond shall be issued under an arrangement satisfactory to the Commissioner and the financial guaranty bond shall be issued by an insurer that is authorized to transact that business in this State, that has a financial standing satisfactory to the Commissioner, and that is neither controlled nor controlling in relation to either the insurer or the person or affiliates for whom the bond is purchased.

Premiums receivable under this subdivision will not be allowed as an admitted asset if a financial evaluation by the Commissioner indicates that the person or affiliates are unlikely to be able to pay the premiums as they become due. The financial evaluation shall be based on a review of the books and records of the controlling or controlled person."

Sec. 2. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1389

CHAPTER 660

AN ACT TO DEANNEX AND DETACH A SMALL AREA OF LAND FROM THE CORPORATE LIMITS OF THE CITY OF ALBEMARLE, NORTH CAROLINA.

Whereas, the Council of the City of Albemarle, North Carolina, by Ordinance 94-04, adopted June 6, 1994, pursuant to the provisions of Article 4A, Part 4, Chapter 160A of the General Statutes of North Carolina, annexed a noncontiguous territory into the corporate limits of the City of Albemarle; and

Whereas, by mutual mistake by the City and a landowner, a small area of the landowner's land was included in the territory annexed, and it is the desire of the City of Albemarle that the small area be deannexed and detached from the corporate limits; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. There is removed from the corporate limits of the City of Albemarle, North Carolina, an area of land containing 0.69 acres, more or less, which was included within the territory annexed by Ordinance 94-04, adopted June 6, 1994, by the Council of the City of Albemarle, and is more particularly described as follows:

Being the eastern portion of a parcel described in Deed Book 301, page 237, Stanly County Registry (Pin: 6537.05.09.0785), lying in South Albemarle Township, and owned by Kenneth W. Long and wife, Rebecca Long.

Beginning at a point in the City Limit line of the City of Albemarle (April 30, 1996), the same lying S. 34-15-07 E., at a distance of 103.55 feet from an axle, the southeast corner of Lot 10, Crystal Village Subdivision, as shown on a map by Dent Hall Turner, RLS, recorded at page 23 of Plat Book 12, Stanly County Registry;

Thence with the City Limit (April 30, 1996), S. 24-28-04 W., a distance of 138.30 feet to an iron pipe, being the northeast corner of Lot 9, Crystal Village Subdivision;

Thence with the northerly line of said Lot 9, S. 70-46-02 W., a distance of 67.54 feet to a point in the easterly line of a sanitary sewer easement shown on a map by William C. McIlwain, Jr., RLS, recorded at page 18 of Plat Book 17 of the Stanly County Registry;

Thence with the easterly line of said easement, N. 27-14-20 W., a distance of 107.70 feet to a point;

Thence continuing with the easterly line of said easement, N. 36-15-33 W., a distance of 97.62 feet to a point in the southerly line of Lot 10, Crystal Village Subdivision;

Thence with the southerly line of said Lot 10, N. 70-46-02 E., a distance of 179.84 feet to an axle, the southwest corner of said Lot 10;

Thence with Long's line, S. 34-15-07 E., a distance of 103.55 feet, to the Point of Beginning, containing 0.69 acres, more or less.

Sec. 2. From and after the effective date of this act, the real and personal property in the area described in Section 1 above shall not be subject to taxes of the City of Albemarle.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1375

CHAPTER 661

AN ACT TO MODIFY THE MANNER OF ELECTION OF THE
WHITEVILLE CITY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective from the first Monday in December of 1996 to the first Monday in December of 1998 the Board of Education of the Whiteville City School Administrative Unit consists of seven members.

(b) Effective from the first Monday in December of 1998 the Board of Education of the Whiteville City School Administrative Unit consists of five members.

(c) The terms of office of those persons elected in 1992 for terms to expire on the fourth Tuesday in February of 1997 shall instead expire on the first Monday in December of 1996. The terms of office of those persons elected in 1994 for terms to expire on the fourth Tuesday in February of 1999 shall instead expire on the first Monday in December of 1998. The terms of office of those persons appointed by the General Assembly in 1995 to serve until the fourth Tuesday in February of 1997 shall instead expire on the first Monday in December of 1996.

Sec. 2. (a) In 1996, one member shall be elected to the Board of Education of the Whiteville City School Administrative Unit from each district established by Section 4 of this act. Of the winning candidates, the two receiving the highest numbers of votes are elected to four-year terms, and the two receiving the next highest numbers of votes are elected to two-year terms. Successors shall be elected for four-year terms.

(b) In 1998 and quadrennially thereafter, one person shall be elected to the Board of Education of the Whiteville City School Administrative Unit at large by the qualified voters of the unit.

(c) Terms begin on the first Monday in December of the year of election.

Sec. 3. (a) Election for the Board of Education of the Whiteville City School Administrative Unit shall be conducted at the time of the general election in even numbered years on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Elections shall be governed by the provisions of Chapters 115C and 163 of the General Statutes not inconsistent with this act.

(b) The period for filing notices of candidacy for the Board of Education of the Whiteville City School Administrative Unit shall be from 12:00 noon on the second Monday of July which is not a holiday until

12:00 noon on the second Monday in August, except in 1996 the Columbus County Board may establish a special filing period to meet the requirements of section 5 of the Voting Rights Act of 1965.

Sec. 4. District 1 consists of all of Whiteville City Council District #1 as it was bounded for the 1995 municipal election, but excluding any territory not in the city limits as of January 1, 1990.

District 2 consists of all of Whiteville City Council District #2 as it was bounded for the 1995 municipal election, but excluding any territory not in the city limits as of January 1, 1990, and in addition includes the following areas:

Beginning at the point where the centerline of US Highway 74 Business intersected the western corporate limits of the Town of Whiteville on January 1, 1990, thence following the centerline of US Highway 74 Business in a westerly direction to the Whiteville/Chadbourn Township line, thence following the Whiteville/Chadbourn Township line in a southeasterly direction to the centerline of State Highway 1437, thence following the boundary between State House Districts 14 and 98 as they existed on June 1, 1996, along: State Highway 1437, Pinelog Swamp and Soules Swamp to the point where Soules Swamp intersected the corporate limits of the Town of Whiteville on January 1, 1990, thence following the corporate limits of the Town of Whiteville as they existed on January 1, 1990, in a generally northerly direction to the point and place of beginning.

Beginning at the point where the centerline of US Highway 701 Bypass intersected the southern corporate limits of the Town of Whiteville on January 1, 1990, thence following the boundary between State House Districts 14 and 98 as they existed on June 1, 1996, along: US Highway 701, State Highway 1166, State Highway 1174 (Prison Camp Road), the corporate limits of the Town of Brunswick as they existed on January 1, 1990, the boundary of Census Blocks 121B/126C and 122B/126C of Census Tract 9910, the corporate limits of the Town of Brunswick as they existed on January 1, 1990, Main Street (State Highway 130), and the Whiteville/Lees Township line easterly to the eastern boundary of the Whiteville City School Administrative Unit; thence in a northerly direction along the boundary of the Whiteville City School Administrative Unit to the centerline of US Highway 74 Business, thence westerly along the centerline of US Highway 74 Business to the intersection with the boundary of District 1, thence following the southern boundary of District 1 to the intersection of the centerline of Maultsby Street and Virgil Street, thence following the eastern and southern boundary of Whiteville City Council District #2 as it was bounded for the 1995 municipal election, (said boundary line excluding any territory not in the city limits as of January 1, 1990) to the point and place of beginning.

District 3 consists of all of the Whiteville City School Administrative Unit located north of US Highway 74 Business not in District 1, and also includes the following described area:

Beginning at the point where the centerline of US Highway 74 Business intersects the Whiteville/Chadbourn Township line, thence following the Township line in a southeasterly direction to the centerline of State Highway 1437, thence following the centerline of State Highway 1437

in a southwesterly direction to the intersection with the centerline of State Highway 1429, thence following the centerline of State Highway 1429 westerly to the boundary of the Whiteville City School Administrative Unit, thence in a northerly direction along the boundary of the Whiteville City School Administrative Unit to the centerline of US Highway 74 Business, thence following the centerline of US Highway 74 Business in an easterly direction to the point and place of beginning.

District 4 consists of all the area of the Whiteville City School Administrative Unit South of US Highway 74 Business which is not in any other district.

Sec. 5. Section 10 of Chapter 172 of the 1977 Session laws reads as rewritten:

"Sec. 10. Any vacancy on the board caused by death, resignation, removal from the administrative unit, or any other reason, shall be filled within 15 days by the remaining board members and the person appointed shall serve for the unexpired term of the member causing the vacancy. In the event there is a tie vote for the filling of a vacancy, the resident superior court judge shall, within 15 days, cast the deciding vote. In the event the remaining board members do not appoint some person to fill the vacancy within 15 days after said vacancy occurs, the resident superior court judge shall appoint some person to fill said vacancy; ~~provided, any vacancy occurring among the members appointed by the General Assembly shall be filled by the General Assembly if the General Assembly is in session.~~ vacancy."

Sec. 6. Section 12 of Chapter 172 of the 1977 Session Laws reads as rewritten:

"Sec. 12. The Board of Education of the Whiteville City Administrative Unit shall ~~have the authority to set the salary, if any, of the members of said board by resolution, with said salary not to exceed that of~~ receive the same salary as the members of the Columbus County Board of Education. ~~Education, except that the board may provide by resolution that its members are to receive no salary."~~

Sec. 7. Chapter 172 of the 1977 Session Laws, except for Sections 10, 11, and 12, is repealed.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1173

CHAPTER 662

AN ACT TO PERMIT THE LOCAL BOARDS OF EDUCATION OF
VARIOUS COUNTIES TO SCHEDULE LONGER SCHOOL DAYS SO
AS TO OFFSET DAYS LOST DUE TO INCLEMENT WEATHER.

The General Assembly of North Carolina enacts:

Section 1. A local board of education may schedule school days longer than the minimum required instructional hours so as to offset days lost due to inclement weather. For the purposes of computing the length of the school term and determining pay of school personnel, every additional

hour scheduled may be used to offset one hour of a school day lost due to inclement weather.

Sec. 2. A local board of education may schedule longer school days under Section 1 of this act only after all extra calendar days required under G.S. 115C-84(c) have been scheduled to be used as instructional days.

Sec. 3. This act applies only to the Alleghany, Buncombe, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Stokes, Swain, Transylvania, and Yancey County School Administrative Units. The local board of education in each of these counties shall evaluate the educational effectiveness of this type of scheduling and shall report the results of this evaluation to the State Board of Education for the first two years following the ratification of this act.

Sec. 4. This act is effective upon ratification and applies to school years beginning with the 1996-97 school year.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1256

CHAPTER 663

AN ACT TO PROVIDE STAGGERED TERMS FOR THE GOVERNING BOARD OF THE TOWN OF SPRUCE PINE, AND CONCERNING THE VOTING POWER OF THE MAYOR.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 335 of the Private Laws of 1913 is rewritten to read:

"Sec. 3. (a) The governing board of the Town of Spruce Pine is the Town Council, which has four members, and the Mayor. They are elected by the qualified voters of the town.

(b) Four members of the Town Council shall be elected in 1997. The two persons receiving the highest numbers of votes are elected for four-year terms, and the two persons receiving the next highest numbers of votes are elected for two-year terms. In 1999 and biennially thereafter, two members are elected for four-year terms.

(c) The Mayor is elected in 1997 and biennially thereafter for a two-year term.

(d) The Mayor shall vote on all matters before the council as if a member of the council under G.S. 160A-75."

Sec. 2. The increase in size of the council becomes effective at the organizational meeting following the 1997 municipal election.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1147

CHAPTER 664

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of January 1, 1995, March 20, 1996, including any provisions enacted as of that date which become effective either before or after that date."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 821

CHAPTER 665

AN ACT TO CLARIFY THE LAW RELATING TO THE PRENEED SALES OF FUNERAL MERCHANDISE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.67(a) is amended as follows:

"(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. Notwithstanding any other provision of law, any person who offers to sell or sells a casket, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of in the casket, shall first comply with the provisions of this Article. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangement for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1102

CHAPTER 666 —

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE SCHOOL CAPITAL CONSTRUCTION STUDY COMMISSION TO DIRECT THE STATE BOARD OF EDUCATION AND THE LOCAL GOVERNMENT COMMISSION TO MODIFY THEIR ACCOUNTING AND REPORTING SYSTEMS TO ALLOW TRACKING OF LOCAL EXPENDITURES IN SCHOOLS' CAPITAL OUTLAY FUNDS, TO DIRECT THE STATE BOARD OF EDUCATION TO DEVELOP A UNIFORM SYSTEM FOR SCHOOLS TO DEVELOP FIVE-YEAR CAPITAL NEEDS PLANS, AND TO AMEND THE SCHOOL BUDGET AND FISCAL CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education, in cooperation with the Local Government Commission, shall modify the uniform budget format used by local school administrative units to include five-year capital needs plans. In addition, the State Board of Education shall modify its accounting system in order to track local expenditures in the capital outlay fund of each local school administrative unit. The State Board of Education shall report these modifications to the Joint Legislative Education Oversight Committee by September 15, 1996.

Sec. 2. Article 31 of Chapter 115C of the General Statutes is amended by adding the following new section to read:

"§ 115C-426.2. Joint planning.

In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article."

Sec. 3. G.S. 115C-431 reads as rewritten:

"§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations. At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, either board may ~~refer the dispute to the clerk of superior court for arbitration within three days after the day of the joint meeting. The clerk~~

~~shall render his decision on the matters in disagreement within 10 days after the day of the referral. The clerk of the superior court shall have the authority to subpoena or issue any orders necessary to have appear before him any member of a board of education and any member of a board of commissioners involved in the dispute and to require that the records of either board be presented to him for the purpose of arbitration of the issues. Within 10 days of the referral, if the clerk in good faith determines that the dispute cannot be arbitrated, he shall transfer the matter to the superior court pursuant to this section and shall so notify the senior resident superior court judge or the presiding superior court judge in the district, notify the clerk of superior court who shall request the appointment of a mediator by superior court under G.S. 7A-38.1. The mediator shall be appointed within five days of the notification to the clerk. The mediator shall present recommendations for resolution of the matters in dispute within 15 days of the notification to the clerk.~~

(c) ~~Within 10 days after the date of award, five days of receiving the recommendations of the mediator,~~ either board may ~~appeal the clerk's award to file an action in~~ the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the ~~appeal~~ filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an ~~appeal taken pursuant to action filed under~~ this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed."

Sec. 4. G.S. 105-503 is recodified as G.S. 115C-440.1.

Sec. 5. G.S. 115C-440.1, as recodified by this act, reads as rewritten:

"§ 115C-440.1. *Report on county spending on public school capital outlay.*

(a) It is the purpose of ~~this Article 42~~ of Chapter 105 of the General Statutes for counties to appropriate funds generated under ~~this that~~ Article to increase the level of county spending for public elementary and secondary school capital outlay (including retirement of indebtedness incurred by the county for this purpose) above and beyond the level of spending prior to the levy of the additional tax authorized under ~~this that~~ Article.

(b) On or before May 1 of each year the Local Government Commission shall furnish to the General Assembly a report of the level of each county's appropriations for public school capital outlay ~~(including retirement of indebtedness incurred and monies reserved for these purposes)~~, include the amount each county has provided for public school capital outlay for a period including at a minimum the most recent five fiscal years, estimates of public school facility needs, the proportion of revenue from taxes collected under Article 40 of this Chapter that has been provided for public school capital outlay purposes ~~(including retirement of indebtedness incurred and monies reserved for these purposes)~~, the proportion of revenue collected under this Article that has been expended for a public school capital outlay purposes ~~(including retirement of indebtedness incurred and monies reserved for these purposes)~~, and any other factors it deems relevant to carrying out the intent stated in subsection (a) of this section. outlay, including appropriations to the public school capital outlay fund, funds expended by counties on behalf of and for the benefit of public schools for capital outlay, monies reserved for future years' retirement of debt incurred or capital

outlay, and any other information the Local Government Commission considers relevant. For purposes of this subsection, the term 'public schools' includes charter schools, if authorized. The Local Government Commission shall develop and implement by May 1, 1997, a uniform reporting system whereby counties are able to report all county expenditures under this subsection.

(c) Any local board of education may petition the Local Government Commission to make a finding that the funds provided by a county for public school capital outlay purposes are, within the financial resources available and consistent with the fiscal policies of the Board of County Commissioners, inadequate to meet the public school capital outlay needs within that county and that the Board of County Commissioners has not complied with the requirements or intent of this Article. The petition shall be in the form prescribed by the Commission. In making its finding, the Commission shall consider the facts it is required to report under G.S. 105-503, subsection (b) of this section, as well as any other information it deems necessary. The Commission shall report its findings on such petition, together with any recommendations it deems appropriate, to the Joint Legislative Commission on Governmental Operations."

Sec. 6. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1144

CHAPTER 667

AN ACT TO CREATE THE BUTNER ADVISORY COUNCIL AND TO ENUMERATE ITS DUTIES.

Whereas, the 1995 General Assembly created a Study Commission on the Transfer of Butner Public Safety Division to review the costs and provision of public safety services to the residents and public agencies at the Camp Butner Reservation located, for the most part, in Granville and Durham Counties; and

Whereas, the Study Commission held meetings at Butner; toured the residential areas and the State and federal facilities located there; and determined that the Camp Butner Reservation is a unique State resource requiring a novel approach to its governance and operations; and

Whereas, the Study Commission determined that the residents of the Camp Butner Reservation desire increased involvement and input into the provision of the "municipal" services and planning for the future of Camp Butner, and that the concentration of State and federal facilities located at Butner are currently receiving "municipal" services from the State of North Carolina and, if those services were transferred to an incorporated town, it would place a significant burden on the residents of the town to provide tax revenues to pay for the services; and

Whereas, under current statutes, the State of North Carolina provides "municipal" services through the Department of Human Resources; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the Camp Butner Reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Human Resources. The General Assembly finds that there is a resident population in the Community of Butner that, because of the unique relationship between the State of North Carolina and cities and counties, as provided in G.S. 122C-410, does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The General Assembly finds that the citizens of the Camp Butner Reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner in dealing with the State of North Carolina through the Department of Human Resources with regard to the provision of public services and planning for the future of the Camp Butner Reservation.

Sec. 2. Article 6 of Chapter 122C of the General Statutes is amended by adding a Part to read:

"Part 1A. Butner Advisory Council.

"§ 122C-412. Butner Advisory Council; created.

(a) There is created a Butner Advisory Council to consist of seven members, to be elected by the residents of the territorial jurisdiction established by G.S. 122C-408(a), at a nonpartisan election administered by the Granville County Board of Elections at the general election on November 5, 1996.

(b) Members of the Butner Advisory Council shall be elected at large, and the election shall be held in accordance with all applicable federal and State constitutional and statutory provisions, including the Voting Rights Act of 1965. For the purpose of elections under this Part, the jurisdiction shall be considered a city under Chapters 160A and 163 of the General Statutes. In accordance with North Carolina law, a candidate for the Butner Advisory Council must be a resident of the territorial jurisdiction established by G.S. 122C-408(a).

(c) The candidates for the Butner Advisory Council shall file their notices of candidacy with the Granville County Board of Elections not earlier than 12:00 noon on the first Friday in July and not later than 12:00 noon on the first Friday in August. Absentee voting by qualified voters residing in the territorial jurisdiction shall be in accordance with G.S. 163-302.

(d) In 1996, the four candidates receiving the highest number of votes shall be elected for terms of five years, and the three candidates receiving the next highest numbers of votes shall be elected for terms of three years. In 1999, and biennially thereafter, the members whose terms expire shall be elected to four-year terms.

(e) The Chairman of the Butner Advisory Council shall be elected from among its members and shall serve at the pleasure of the council.

(f) The Butner Advisory Council shall comply with the applicable and relevant provisions of Parts 1, 2, and 3 of Article 5 of Chapter 160A of the

General Statutes with respect to the filling of vacancies and the organization and procedures of the council as if it were a city.

"§ 122C-412.1. *Butner Advisory Council; powers.*

(a) The Butner Advisory Council may advise the Secretary of Human Resources, through resolutions adopted by the council, on the operations of the Camp Butner Reservation and the concerns of the residents of the Camp Butner Reservation in connection with the exercise of the powers granted to the Secretary pursuant to G.S. 122C-403.

(b) When the council adopts a resolution relating to one of the specific powers referenced in G.S. 122C-403 and delivers the resolution to the Office of the Secretary of Human Resources, the Secretary may approve the resolution, and it shall be carried out by the Butner Town Manager. The Secretary shall have no more than 30 days during which to disapprove any recommendation of the council contained in the resolution. Any disapproval shall be in writing, stating the reasons for the disapproval, and shall be returned to the council. If the Secretary does not disapprove a recommendation of the council within the prescribed period, the recommendation shall be deemed approved by the Secretary and shall be carried out by the Butner Town Manager.

"§ 122C-412.2. *Butner Advisory Council; planning responsibility.*

The Butner Advisory Council shall, in consultation with the Department of Human Resources, the Community Assistance Division of the Department of Commerce, the Institute of Government, and other State and local agencies, prepare a long-range plan for the future development of the Camp Butner Reservation. This plan shall provide a blueprint for the development of the Reservation and the adjoining areas of Granville, Durham, and Person Counties and shall consider issues such as:

- (1) The possible incorporation of a municipality on the Camp Butner Reservation;
- (2) The provision of housing, public safety services, water and sewer services, school facilities, and park and recreational services for the increasing Butner population;
- (3) The possible transfer of State-owned property for the future development in and around Butner;
- (4) The growth and development of business and industrial areas within the Camp Butner Reservation, including planning and zoning issues; and
- (5) How to maximize the utility of the Camp Butner Reservation to the State of North Carolina as a site for future State facilities and still meet the needs and improve the quality of life for the residents of Butner.

Copies of the long-range plan shall be submitted to the Secretary of Human Resources, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the General Assembly, and to each member of the General Assembly representing the area no later than December 31, 1998. The Department of Human Resources, through the Butner Town Manager, shall provide necessary financial and personnel support for the preparation of this plan."

Sec. 3. G.S. 122C-403 reads as rewritten:

"§ 122C-403. *Secretary's authority over Camp-Butner reservation.*

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

- (1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.
- (2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.
- (3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply. The Secretary may appoint the Butner Advisory Council as a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, the Butner Advisory Council shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388.
- (4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the ~~Community of Butner Planning Commission~~ Butner Advisory Council as the planning agency for the reservation.
- (5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.
- (6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.
- (7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.
- (8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.
- (9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the ~~Chief of Support Services of John Umstead Hospital or another appropriate person.~~ Butner Town Manager who shall be hired upon the recommendation of the Butner Advisory Council and shall be assigned to the Office of the Secretary of Human Resources. The Butner Advisory Council shall submit the names of three candidates for the

position of Butner Town Manager to the Secretary of Human Resources and the Secretary shall select one of the candidates. The candidates shall meet the qualifications set by the State Personnel Commission for the position. The Butner Town Manager shall serve at the pleasure of the Secretary. The Secretary shall, through the Butner Town Manager, provide all necessary administrative assistance to the council in carrying out its duties.

(10) Adopt rules to carry out the purposes of this Article."

Sec. 4. G.S. 122C-404 is repealed.

Sec. 5. G.S. 122C-405 reads as rewritten:

"§ 122C-405. *Procedure applicable to rules.*

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Community of Butner Planning Commission Butner Advisory Council shall conduct the hearing."

Sec. 6. Part 1 of Article 6 of Chapter 122C is amended by adding a new section to read:

"§ 122C-411.1. *Butner Public Safety fees.*

All public safety fees assessed in the territorial jurisdiction established in G.S. 122C-408(a) and fees collected under contracts entered into pursuant to G.S. 122C-411 shall be placed in a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division."

Sec. 7. The Study Commission on the Transfer of Butner Public Safety created by Section 20.5 of Chapter 324 of the 1995 Session Laws is continued through December 31, 1999. The funds appropriated for the operation of the Commission by that section, and remaining unexpended, shall not revert and shall remain available to the Commission to continue its work. The Commission shall provide legislative oversight to ensure compliance with the provisions of this act.

Sec. 8. Section 20.5 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 20.5. (a) There is established a Study Commission on the Transfer of Butner Public Safety to be composed of 12 members: six members to be appointed by the Speaker of the House of Representatives and six members to be appointed by the President Pro Tempore of the Senate. The appointees shall serve until the termination of the Commission. The Speaker of the House and the President Pro Tempore of the Senate shall each designate a cochair from their appointees. Either cochair may call the first meeting of the Commission. Vacancies shall be filled in the same manner as the original appointments were made.

(b) The Commission shall:

- (1) Examine the potential for transferring the functions and responsibilities of Butner Public Safety from the Department of Crime Control and Public Safety to other State or local entities, including the sale or transfer of equipment, State buildings, or property currently occupied by Butner Public Safety;
- (2) Determine the most appropriate means of meeting the service needs of both the State institutions and the local residents that would be affected by such a transfer, including the feasibility of incorporating Butner; and
- (3) Determine the most cost-effective means of accomplishing such a transfer.

(c) With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the Offices of the House and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

(d) The Study Commission ~~shall~~ may submit ~~a final~~ an interim written report of its findings and recommendations to the General Assembly by May 1, ~~1996~~, 1996, and may submit additional interim reports to regular sessions of the General Assembly beginning with the 1997 Session. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. ~~Upon filing its final report, the Commission shall terminate. The Study Commission shall submit a final report to the General Assembly prior to its termination.~~

(e) Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1.
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6.
- (3) All other Commission members at the rate established in G.S. 138-5.

(f) There is allocated from the funds appropriated to the Legislative Services Commission's studies reserve to the Study Commission on the Transfer of Butner Public Safety the sum of twenty-five thousand dollars (\$25,000) for the 1995-96 fiscal year to conduct the study directed by this section. These and other appropriated or allocated funds shall remain available to the Commission until it has filed its final report."

Sec. 9. This act is effective upon ratification except for Section 8 of this act which becomes effective April 30, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1201

CHAPTER 668

AN ACT TO PROVIDE THAT INSURERS ARE NOT REQUIRED TO OBTAIN WRITTEN CONSENT TO RATE ON EACH POLICY RENEWAL AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-30 reads as rewritten:

"§ 58-36-30. *Deviations.*

(a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. However, an insurer may deviate from the rates promulgated by the Bureau provided the insurer has filed the deviation to be applied both with the Bureau and the Commissioner, and provided the ~~said~~ deviation is uniform in its application to all risks in the State of the class to which ~~such the~~ deviation is to apply; and provided such deviation is approved by the Commissioner. The Commissioner shall approve proposed deviations if ~~the same they~~ do not render the rates excessive, inadequate or unfairly discriminatory. If approved, the deviation may thereafter be amended, subject to the provisions of this subsection. The deviation may be terminated only if the deviation ~~will have~~ has been in effect for a period of six months before the effective date of the termination and the insurer notifies the Commissioner of the termination no later than 15 days before the effective date of the termination.

(b) A rate in excess of that promulgated by the Bureau may be charged by an insurer on any specific risk provided such if the higher rate is charged in accordance with the approval of rules adopted by the Commissioner and with the knowledge and written consent of the insured. The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates are greater than those rates that are applicable in the State of North Carolina. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner. This subsection may be used to provide motor vehicle liability coverage limits above those required under Article 9A of Chapter 20 of the General Statutes and above those cedable to the Facility under Article 37 of this Chapter to persons whose personal excess liability insurance policies require that they maintain specific higher liability coverage limits. ~~All data filed with~~ Any data obtained by the Commissioner under this subsection ~~are is~~ is proprietary and confidential and ~~are not public records is~~ is not a public record under G.S. 132-1 or G.S. 58-2-100.

(c) Any deviation with respect to workers' compensation and employers' liability insurance written in connection therewith as filed under subsection (a) of this section shall apply uniformly to all classifications. Any approved

rate under subsection (b) of this section with respect to workers' compensation and employers' liability insurance written in connection therewith shall be furnished to the Bureau.

(d) Notwithstanding any other provision of law prohibiting insurance rate differentials based on age, with respect to nonfleet private passenger motor vehicle insurance under the jurisdiction of the Bureau, any member of the Bureau may apply for and use in this State, subject to the Commissioner's approval, a downward deviation in the rates for insureds who are 55 years of age or older."

Sec. 2. G.S. 58-40-30(c) reads as rewritten:

"(c) Upon written consent of the ~~insured, stating his reasons therefor,~~ insured stating the insured's reasons, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, ~~provided that it is filed with the Commissioner in accordance with subsection (a) of this section.~~ risk, in accordance with rules adopted by the Commissioner. The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates or deductible, or both, are greater than those rates or deductibles, or both, that are applicable in the State of North Carolina. The insurer shall retain the signed consent form and other policy information for each insured and make this information available to the Commissioner, upon request of the Commissioner."

Sec. 3. This act becomes effective October 1, 1996, and applies to policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1202

CHAPTER 669

AN ACT TO CONFORM THE LAW GOVERNING SMALL EMPLOYER HEALTH BENEFIT PLANS TO 1995 LEGISLATION AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES AND TO CLARIFY THE APPLICABILITY OF CERTAIN MEDICAL UNDERWRITING PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-50-130(a)(2) reads as rewritten:

"(2) In determining whether a preexisting-conditions provision applies to an eligible employee or to a dependent, all health benefit plans shall credit the time the person was covered under a previous ~~group~~ health benefit plan if the previous coverage was continuous to a date not more than 60 days before the effective date of the new coverage, exclusive of any applicable waiting period under the plan. As used in this subdivision with respect to previous coverage, the meaning of 'health benefit plan' is not limited to plans subject to this act under G.S. 58-50-115, the definition in G.S. 58-50-115, but includes any health benefit plan provided by a health insurer, as that term is defined in G.S. 58-51-115(a), or

any government plan or program providing health benefits or health care."

Sec. 2. G.S. 58-3-173(a) reads as rewritten:

"(a) As used in this section:

- (1) 'Health benefit plan' means a plan covering ~~a group~~ an employer group of persons and in the form of: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by other federal law or regulation. 'Health benefit plan' does not mean any of the following kinds of insurance:
 - a. Accident
 - b. Credit
 - c. Disability income
 - d. Long-term or nursing home care
 - e. Medicare supplement
 - f. Specified disease
 - g. Dental or vision
 - h. Coverage issued as a supplement to liability insurance
 - i. Workers' compensation
 - j. Medical payments under automobile or homeowners
 - k. Hospital income or indemnity
 - l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
- (2) 'Insurer' includes an entity subject to Articles 49, 65, or 67 of this Chapter."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1345

CHAPTER 670

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMITTEE ON APPROPRIATIONS BY ESTABLISHING THE PERCENTAGE RATES FOR THE INSURANCE REGULATORY CHARGE AND THE PUBLIC UTILITY REGULATORY FEE.

The General Assembly of North Carolina enacts:

Section 1. (a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven and twenty-five hundredths percent (7.25%) for the 1996 calendar year.

(b) This section is effective upon ratification.

Sec. 2. (a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is ten hundredths percent

(0.10%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1996.

(b) This section becomes effective July 1, 1996.

Sec. 3. This act becomes effective as provided therein.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1097

CHAPTER 671

AN ACT TO PERMIT THE CITY OF BREVARD TO CONVEY CERTAIN PARCELS OF REAL PROPERTY TO FORMER OWNERS OR ADJOINING OWNERS WITH OR WITHOUT CONSIDERATION.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, the City of Brevard may convey by private sale, with or without monetary consideration, all its right, title, and interest in and to the following real property lying within the city of Brevard, in Transylvania County, as follows:

PARCEL ONE: A parcel located at the North end of Gaston Street adjacent to the property of Preston Harold Rahn (Deed Book 123, page 66) more specifically described as follows: BEGINNING at an iron pin on the north side of East Probart Street, the southeastern most corner of the Rahn property, thence North 23 deg. 25 min. 38 sec. East 48 feet with the Rahn line to an iron pin; thence South 66 deg. 34 min. 22 sec. East 27 feet with the Rahn line to an iron pin; thence South 30 deg. 18 min. 43 sec. West 48 feet, more or less, to the north margin of East Probart Street; thence with the margin of East Probart Street North 66 deg. West 27 feet, more or less, to the point of beginning; being a portion of the property described in a deed from F. M. McCall, Sr., and wife, Ruby D. McCall and F. M. McCall, Jr., and wife, Irene Morris McCall to the Town of Brevard, dated June 15, 1962 and recorded in Deed Book 140, page 184, Transylvania County Registry.

Subject to existing utility rights of way.

PARCEL TWO: A parcel located adjacent to the property owned by Brevard College Corporation and more specifically described as follows: BEGINNING at an iron pin on a knoll, said pin situated South 11 deg. 18 min. East 407 feet from the southwest corner of the main part of the building known as Ross Hall and runs thence North 85 deg. 45 min. East 275 feet to an iron pin; thence, South 2 deg. 43 min. East 399.5 feet to an iron pin; thence, North 73 deg. 28 min. West 282 feet to a stake; thence North 4 deg. 15 min. West 300 feet to the BEGINNING. Containing 2.175 acres.

Being all of the property more specifically described in a deed from Brevard College Corporation to the Town of Brevard dated March 15, 1951, and recorded in Deed Book 100, page 548, Transylvania County Registry; Subject to all exceptions noted in said deed and existing utility rights of way.

(b) If the conveyance under subsection (a) of this section is to an adjacent property owner or to a former owner of the property, the conveyance may be made at private sale, with or without consideration.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1421

CHAPTER 672

AN ACT TO PROVIDE FOR THE ELECTION OF THE BOARD OF EDUCATION OF THE MOUNT AIRY CITY SCHOOL ADMINISTRATIVE UNIT.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 2 of the Private Laws of 1895, as rewritten by Chapter 475 of the 1955 Session Laws, is rewritten to read:

"Sec. 6. (a) Beginning with the general election to be held in November 1996, the Board of Education of the Mount Airy City Schools Administrative Unit shall be elected on a nonpartisan plurality basis in accordance with G.S. 163-292 with all candidates being elected by vote of all the qualified voters within the Mount Airy City Schools Administrative Unit.

(b) The Board of Education shall consist of seven members who shall reside within the Mount Airy City Schools Administrative Unit, elected as follows:

- (1) Two members from District A, which consists of Mount Airy #1.
- (2) Two members from District B, which consists of Mount Airy #2.
- (3) One member from District C, which consists of Mount Airy #4 and Mount Airy #5.
- (4) One member from District D, which consists of Mount Airy #6 and Mount Airy #7.
- (5) One member at-large.

(c) At the initial election in November 1996, one member shall be elected from each district and one at-large as provided in this subsection. These five elected members shall take office at the first regular meeting of the Board of Education in December 1996. The terms of office of the five current members of the Board of Education whose terms expire on or before June 30, 1997, shall instead terminate at the commencement of that meeting, except that as to those current Board of Education members whose terms expire on June 30, 1996, the Board of Commissioners of the City of Mount Airy may appoint successors to serve from July 1, 1996, until the first regular meeting in December 1996, or it may allow either or both of those members to hold over until their successors are elected and qualify. One member each shall be elected in 1996 and quadrennially thereafter from Districts A, B, C, and D for four-year terms. The member elected in 1996 on an at-large basis shall be elected for a two-year term, and a successor shall be elected in 1998 and quadrennially thereafter for a four-year term.

(d) One member each shall be elected in 1998 and quadrennially thereafter from District A and B for four-year terms to replace the members

whose terms currently expire in 1998. The Board of Commissioners of the City of Mount Airy may appoint successors to serve from July 1, 1998, until the first regular meeting in December 1998 or it may allow either or both of those members to hold over until their successors are elected and qualify.

(e) At the first regular meeting in December after each election, the Board of Education shall elect from its membership a Chairman to serve a two-year term.

(f) Any vacancies on the Board of Education shall be filled for the remainder of the unexpired term by majority vote of the remaining members of the Board of Education.

(g) Candidates shall file notice of candidacy not earlier than 12:00 noon on the first Friday in July (except that if that day is a holiday, then not earlier than 12:00 noon on the next Monday) and not later than 12:00 noon on the first Friday in August of the year of election."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1172

CHAPTER 673

AN ACT TO TRANSFER THE RAIL SAFETY SECTION FROM THE UTILITIES COMMISSION TO THE DEPARTMENT OF TRANSPORTATION AND TO DIRECT THE SECRETARY OF TRANSPORTATION TO STUDY THE NEED FOR CONTINUATION OF THE RAIL SAFETY INSPECTION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. The statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Rail Safety Section of the Transportation Division of the North Carolina Utilities Commission, is transferred to the Department of Transportation.

Sec. 2. G.S. 62-41 reads as rewritten:

"§ 62-41. *To investigate accidents involving public utilities; to promote general safety program.*

The Commission may conduct a program of accident prevention and public safety covering all public utilities with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a ~~railroad or highway involving a public utility, or any accident in connection with any other~~ public utility. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Commission, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Commission may adopt reasonable rules and regulations for the safety of the public as affected by public utilities and the safety of public utility employees. The Commission shall cooperate with and coordinate its activities for public utilities with similar programs of the Division of Motor Vehicles, the Insurance

Department, the Industrial Commission and other organizations engaged in the promotion of highway safety and employee safety."

Sec. 3. G.S. 62-235 is repealed.

Sec. 4. G.S. 136-18 is amended by adding two new subdivisions to read:

"(33) The Department of Transportation is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees. If the Department finds any equipment or facilities to be unsafe, it shall at once notify the railroad company and require the company to repair the equipment or facilities.

(34) The Department of Transportation may conduct, in a manner consistent with federal law, a program of accident prevention and public safety covering all railroads and may investigate the cause of any railroad accident. In order to facilitate this program, any railroad involved in an accident that must be reported to the Federal Railroad Administration shall also notify the Department of Transportation of the occurrence of the accident."

Sec. 5. G.S. 62-236 is recodified as G.S. 136-20.1 and reads as rewritten:

"§ ~~62-236~~ 136-20.1. To require installation and maintenance of block system and safety devices; automatic signals at railroad intersections.

(a) The ~~Commission~~ Department of Transportation is empowered and directed to require any railroad company to install and put in operation and maintain upon the whole or any part of its road a block system of telegraphy or any other reasonable safety device, but no railroad company shall be required to install a block system upon any part of its road unless at least eight trains each way per day are operated on that part.

(b) The ~~Commission~~ Department of Transportation is empowered and directed to require, when public safety demands, where two or more railroads cross each other at a common grade, or any railroad crosses any stream or harbor by means of a bridge, to install and maintain such a system of interlocking or automatic signals as will render it safe for engines and trains to pass over such crossings or bridge without stopping, and to apportion the cost of installation and maintenance between said railroads as may be just and proper."

Sec. 6. The Secretary of Transportation shall study the provision of rail safety inspection services in North Carolina by the State and the Federal Railroad Administration and shall recommend to the General Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 7. The Department of Transportation shall implement this act within available funds.

Sec. 8. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1280

CHAPTER 674

AN ACT TO RECODIFY THE STATUTE ESTABLISHING LIENS ON INSURANCE PROCEEDS TO SECURE CHILD SUPPORT AND TO PROVIDE THAT SUCH LIENS ARE SUBORDINATE TO LIENS ARISING UNDER ARTICLE 9 OF CHAPTER 44 OF THE GENERAL STATUTES AND TO OTHER HEALTH CARE PROVIDER CLAIMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-49.1 is recodified as G.S. 58-3-185.

Sec. 2. G.S. 58-3-185, as recodified by this act, reads as rewritten:
 "§ 58-3-185. *Lien created for payment of past-due child support obligations.*

(a) In the event that the Department of Human Resources or any other obligee, as defined in G.S. 110-129, provides written notification to an insurance company authorized to issue policies of insurance pursuant to this Chapter that a claimant or beneficiary under a contract of insurance owes past-due child support and accompanies this information with a certified copy of the court order ordering support together with proof that the claimant or beneficiary is past due in meeting this obligation, there is created a lien upon any insurance proceeds in favor of the Department or obligee. This section shall apply only in those instances in which there is a nonrecurring payment of a lump-sum amount equal to or in excess of three thousand dollars (\$3,000) or periodic payments with an aggregate amount that equals or exceeds three thousand dollars (\$3,000).

(b) Liens arising under this section shall be subordinate to liens upon insurance proceeds for personal injuries arising under Article 9 of Chapter 44 of the General Statutes and valid health care provider claims covered by health benefit plans as defined in G.S. 58-3-172. As used in this section, the term health benefit plans does not include disability income insurance."

Sec. 3. Section 6(b) of Chapter 538 of the 1995 Session Laws is repealed.

Sec. 4. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1141

CHAPTER 675

AN ACT TO ALLOW THE DIVISION OF MOTOR VEHICLES TO USE DIFFERENT COLOR BORDERS TO DISTINGUISH THE AGE OF LICENSE HOLDERS, THEREBY MAKING IT EASIER TO ISSUE DUPLICATE LICENSES BY MAIL WHEN THE PHOTOGRAPH ON THE ORIGINAL LICENSE IS A DIGITIZED IMAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(n) reads as rewritten:

"(n) Format. -- A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) The license holder's social security number or another identifying number assigned by the Division.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the photograph would violate the license holder's religious convictions. In taking photographs of license holders, the Division must distinguish between license holders who are less than 21 years old and license holders who are at least 21 years old by using different color backgrounds or borders for each group. The Division shall determine the different colors to be used.

At the request of an applicant for a drivers license, a license issued to the applicant must contain the applicant's race."

Sec. 2. G.S. 20-14 reads as rewritten:

"§ 20-14. *Duplicate licenses.*

A person may obtain a duplicate of a license issued by the Division by paying a fee of ten dollars (\$10.00) and giving the Division satisfactory proof that any of the following has occurred:

- (1) The person's license has been lost or destroyed.
- (2) It is necessary to change the name or address on the license.
- (3) Because of age, the person is entitled to a license with a different color photographic ~~background~~, background or a different color border.
- (4) The Division revoked the person's license, the revocation period has expired, and the period for which the license was issued has not expired."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1122

CHAPTER 676

AN ACT TO ALLOW SWAIN COUNTY TO EMPLOY ATTACHMENT OR GARNISHMENT AND TO OBTAIN A LIEN FOR AMBULANCE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-51.8 reads as rewritten:

"§ 44-51.8. *Counties to which Article applies.*

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Pasquotank, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1328

CHAPTER 677

AN ACT TO ABOLISH THE SANFORD GOLF COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 822, Session Laws of 1965, as amended by Section 2 of Chapter 541 of the 1971 Session Laws, is repealed.

Sec. 2. Any assets and liabilities of the Sanford Golf Commission vest by operation of law in the City of Sanford.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1388

CHAPTER 678

AN ACT TO AMEND THE LAW REGARDING THE CITY OF WILSON FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 138 of the 1969 Session Laws is rewritten to read:

"Sec. 2. Transfers of Funds and Disbursements. Notwithstanding the provisions of the former G.S. 118-7, recodified as G.S. 58-84-35, the Board of Trustees of the Local Firemen's Relief Fund of the City of Wilson shall:

(a) Prior to June 30, 1969, transfer to the Supplemental Retirement Fund all funds, including earnings on investments, of the Local Relief Fund in excess of ten thousand dollars (\$10,000);

(b) In each subsequent calendar year until the 1996 calendar year, and within 30 days after receipt from the City Treasurer of the annual funds paid

to the Local Relief Fund by authority of former G.S. 118-5, recodified as G.S. 58-84-25, transfer to the Supplemental Retirement Fund such funds;

(b1) In the 1996 calendar year and in each subsequent calendar year, and within 30 days after receipt from the City Treasurer of the annual funds paid to the Local Relief Fund by authority of G.S. 58-84-25, transfer to the Supplemental Retirement Fund fifty percent (50%) of all funds, including earnings on investments, of the Local Relief Fund;

(c) At the close of each calendar year until the 1996 calendar year, when the amount of funds in the Local Relief Fund shall, by reason of disbursements authorized by former G.S. 118-7, recodified as G.S. 58-85-35, be less than ten thousand dollars (\$10,000), transfer from the Supplemental Retirement Fund to the Local Relief Fund an amount sufficient to maintain in the Local Relief Fund the sum of ten thousand dollars (\$10,000);

(d) As soon as practicable after June 30 of each year, but in no event later than December 31, divide the income earned in the preceding calendar year upon investments of funds belonging to the Supplemental Retirement Fund and upon investments of funds belonging to the Local Relief Fund into equal shares and disburse the same as supplemental retirement benefits in accordance with Section 3 of this act."

Sec. 2. None of the provisions of this act shall create a liability for the City of Wilson's Firemen's Supplemental Retirement Fund unless there are sufficient current assets in the Fund to pay fully for the liability. Under no circumstances shall the State incur any liability as a result of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1210

CHAPTER 679

AN ACT CLARIFYING THE DISTRIBUTION OF PROFITS FROM THE OPERATION OF THE DARE COUNTY ALCOHOLIC BEVERAGE CONTROL BOARD.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 202 of the 1977 Session Laws reads as rewritten:

"Section 1. ~~After deducting the amounts required to be expended for enforcement and paying salaries and expenses, After making the distributions provided in subsections (b) and (c) of G.S. 18B-805, the Dare County Alcoholic Beverage Control Board shall determine and retain from gross profits the remaining gross receipts~~ a sufficient and proper amount necessary to be retained as working ~~capital~~. capital, within the limits set by rules of the Commission.

The entire remaining ~~net profits~~ gross receipts shall be paid over to the Dare County Board of County Commissioners ~~which shall allocate said funds to be allocated~~ as follows:

- (1) an amount equal to forty-two and one-half percent (42.5%) of the ~~amount of funds~~ shall be allocated to the remaining after the Dare

~~County Alcoholic Beverage Control Board's determination of the amount necessary to be retained for working capital shall be allocated to the Dare County Tourist Bureau to be used for publicity and promotional purposes in building the tourist industry of Dare County, thereby benefiting the economy and citizens of said county; County of Dare to be administered by the Dare County Department of Social Services, through use of a special revenue fund account, to be used to supplement the operating cost of an in-county out-of-home group care facility for abused, neglected, and dependent children;~~

- (2) ~~up to twenty percent (20%) of net profits~~ may be allocated to the Dare County Alcoholic Beverage control Board for capital improvements;
- (3) ~~fifteen percent (15%) of the net profits remaining~~ shall be allocated to and divided ~~between~~ among the incorporated towns within Dare County, ~~the Town of Kill Devil Hills, the Town of Manteo, and the Town of Nags Head,~~ such sums to go to the general fund of each of ~~said the~~ incorporated towns to be used for any governmental purpose deemed necessary by the governing body of ~~said each~~ town; and
- (4) ~~any remaining net profits shall go~~ the balance of gross receipts not allocated under the foregoing subdivisions shall be allocated to the general fund of the county to be expended for any lawful purpose."

Sec. 2. Section 1 of Chapter 201 of the 1965 Session Laws, as amended by Chapter 1132 of the 1979 Session Laws and Chapter 995 of the 1981 Session Laws, is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1212

CHAPTER 680

AN ACT TO AMEND THE CHARTER OF THE CITY OF GREENSBORO WITH RESPECT TO SETTLEMENT OF CLAIMS.

The General Assembly of North Carolina enacts:

Section 1. Section 7.03 of the Charter of the City of Greensboro, as set forth in Section 1 of Chapter 1137 of the 1959 Session Laws, as amended in Chapter 686 of the 1961 Session Laws, Chapter 55 of the 1963 Session Laws, Chapter 213 of the 1973 Session Laws, Chapter 159 of the 1981 Session Laws, and Chapter 4 of the 1991 Session Laws, is amended by deleting "twenty-five thousand dollars (\$25,000)", and substituting "fifty thousand dollars (\$50,000)" in subdivisions (1) and (2).

Sec. 2. Section 7.21 of the Charter of the City of Greensboro, as set forth in Section 24, Chapter 686 of the Session Laws of 1961, as amended by Chapter 55 of the 1963 Session Laws, Chapter 85 of the 1977 Session Laws, Chapter 159 of the 1981 Session Laws, and by Chapter 6 of the 1993

Session Laws is amended by striking out "twenty-five thousand dollars (\$25,000)" and substituting "fifty thousand dollars (\$50,000)".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1231

CHAPTER 681

AN ACT TO INCLUDE THE COUNTIES OF ALLEGHANY, SURRY, AND WATAUGA AMONG THOSE COUNTIES THAT REQUIRE CONSENT OF THE BOARD OF COUNTY COMMISSIONERS BEFORE LAND MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Caldwell, Caswell, Catawba, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Durham, Forsyth, Franklin, Gaston, Graham, Granville, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Montgomery, New Hanover, Onslow, Pender, Person, Robeson, Rockingham, Rowan, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, and Wilkes counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1309

CHAPTER 682

AN ACT TO ADD AVERY COUNTY TO THOSE COUNTIES MAKING IT UNLAWFUL TO REMOVE OR DESTROY ELECTRONIC COLLARS ON DOGS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 699 of the 1993 Session Laws reads as rewritten:

"Sec. 4. This act applies only to Avery, Haywood, Jackson, Swain, Macon, Henderson, and Transylvania Counties."

Sec. 2. This act becomes effective October 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1342

CHAPTER 683

AN ACT TO PROVIDE THAT THE CUMBERLAND COUNTY BOARD OF COMMISSIONERS MUST FILL A VACANCY WITH THE PERSON NOMINATED BY THE APPROPRIATE POLITICAL PARTY IF THE NOMINATION IS MADE ON A TIMELY BASIS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-27.1(h) reads as rewritten:

"(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1401

CHAPTER 684

AN ACT AMENDING THE CHARTER OF THE CITY OF FAYETTEVILLE REGARDING ZONING HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 756 of the 1981 Session Laws, being Section 8.17 of the Charter of the City of Fayetteville, reads as rewritten:

"Sec. 3. G.S. 160A-364 is amended by rewriting said paragraph to read as follows:

(1) Before the City of Fayetteville may adopt or amend any ordinance pursuant to Part 3 of this Article, ~~the Cumberland County Joint Planning Board~~ a planning agency as defined by G.S. 160A-361 shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included.

(2) Any person aggrieved by the recommendation of the ~~Cumberland County Planning Board~~ planning agency shall have the right to appeal the action of the planning board in writing to the Clerk of the City of Fayetteville within 10 days of the action of the ~~planning board~~ agency. If an appeal is timely filed, then the city council shall hold a public hearing with prior notice being published in accordance with subparagraph (1).

(3) If the ~~planning board's~~ agency's recommendation was to rezone the property, and no appeal is filed pursuant to subparagraph (2), then at its next regular council meeting following the expiration of the time provided for appeal in subparagraph (2) above, the city council shall have the right to

adopt the rezoning without further public hearing. A rezoning shall be defined as any change in the zoning classification of property, whether it be in whole, in part, or a combination of new classifications, or an initial zoning of property added to the city's jurisdiction by annexation or other action.

(4) If the action of the planning ~~board~~ agency was to recommend denial of the petition, and no appeal is taken within the time prescribed pursuant to subparagraph (2), then, the action recommended by the planning ~~board~~ agency shall be deemed to be the final action of the city council."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1377

CHAPTER 685

AN ACT ESTABLISHING THE HARMON FIELD BOARD OF SUPERVISORS FOR ADMINISTRATION OF HARMON FIELD LOCATED IN POLK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the Harmon Field Board of Supervisors (hereinafter "Board") for the administration of Harmon Field located in the Tryon Township of Polk County.

Sec. 2. (a) The Board shall consist of five members, each of whom shall reside in Tryon Township. The members of the Board shall be appointed as follows:

- (1) Two members from the Town of Tryon appointed by the Tryon Town Council, each to serve staggered four-year terms;
- (2) Two members appointed by the Polk County Commissioners, each to serve staggered four-year terms; and
- (3) One member, appointed alternately by the Tryon Town Council and the Polk County Commissioners, to serve a two-year term.

(b) The initial members of the Board may be appointed by the respective appointing authorities to serve less than four-year terms in order to allow for staggered terms. The initial member appointed pursuant to subdivision (a)(3) of this section shall be appointed by the Polk County Commissioners. The initial appointments shall be effective July 1, 1996, and all subsequent appointments shall run on a year beginning July 1st and ending June 30th. Vacancies on the Board shall be filled for any unexpired portion of a term by the respective appointing authorities.

Sec. 3. The Board shall adopt written bylaws to govern the conduct of its business. The Board's bylaws shall be subject to the approval of the Tryon Town Council and the Polk County Commissioners.

Sec. 4. Nothing in this act affects the authority of Polk County to levy the ad valorem tax in Tryon Township, pursuant to Chapter 793 of the 1949 Session Laws, for the purpose of maintaining Harmon Field.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1411

CHAPTER 686 —

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina Hospitals at Chapel Hill, of the capital improvements projects listed in the act for the respective institutions, and authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, including patient receipts at the University of North Carolina Hospitals at Chapel Hill, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The capital improvements projects authorized by this act to be constructed and financed as provided in Section 1 of this act are as follows:

1. Appalachian State University

600-Space Parking Deck	\$5,459,400
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2. East Carolina University

Intramural Fields	1,612,800
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3. Fayetteville State University

Student Center Addition (partial)	3,042,900
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4. North Carolina Central University

Improvements to Six Residence Halls	2,922,600
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5. Pembroke State University

New Residence Hall (partial)	\$2,789,700
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6. The University of North Carolina at Asheville

200-Car Parking Structure	2,631,800
Highrise Residence Hall HVAC Replacement	1,198,300
7. The University of North Carolina at Chapel Hill

Improvements to Kenan Stadium	38,761,100
Renovations & Additions to Aycock & Graham	
Residence Halls	6,422,200
Health Affairs Bookstore	2,989,000
Renovation and Expansion of Finley Golf	
Course	4,622,900
Health Affairs Parking Deck	18,045,300
Renovation of Food Service Facilities	13,082,500
8. The University of North Carolina at Greensboro

	Phillips Hawkins Dormitory Renovations	6,002,700
9.	The University of North Carolina Hospitals at Chapel Hill	
	Wellness Center	7,795,300
	Addition to the UNC Hospitals Administrative Office Building	9,505,400
10.	North Carolina State University	
	Carter-Finley Stadium Renovations	11,000,000
	Reynolds Coliseum Renovations	5,000,000

Sec. 3. At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding the project authorized by this act. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory Budget Commission. In no event may appropriations from the General Fund be used for a project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 507

CHAPTER 687

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM TO PERMIT THE CITY COUNCIL TO SPECIALLY ASSESS BENEFITED PROPERTY FOR THE COST OF EXTENDING WATER AND SEWER LINES TO PROPERTY LOCATED OUTSIDE OF THE CITY LIMITS WHEN REQUESTED BY THE BOARD OF COMMISSIONERS OF DURHAM COUNTY WITHOUT THE NECESSITY OF A PETITION FOR SUCH IMPROVEMENTS BEING SUBMITTED.

The General Assembly of North Carolina enacts:

Section 1. Section 81 of the Charter of the City of Durham, being Chapter 671 of the Session Laws of 1975, reads as rewritten:

"Sec. 81. **Additional Assessment Authority.** -- In exercising the authority granted under Article 16 of Chapter 160A of the ~~North Carolina~~ General Statutes to extend and operate public enterprises outside its corporate limits, the City Council may specially assess all, or part, all or part of the costs of constructing, reconstructing, extending, building or improving water supply and distribution systems or sewage collection and disposal ~~systems or both such~~ systems, or any part thereof, outside the corporate limits of the City against property benefited ~~therefrom; provided, however, no special assessment shall be levied until a petition which meets the requirements set forth in Section 77, subsection (7) of this Charter has been submitted to the City by the owners of the property affected, therefrom.~~ Special assessments levied pursuant to this section shall be levied and collected in the same way and under the same authority and procedures as

special assessments levied and collected by the City upon property within the corporate limits. No special assessment shall be levied under the authority of this section until a petition which meets the requirements set forth in Section 77, subsection (7) of this Charter has been submitted to the City by the owners of the property affected; provided, however, no petition is necessary in cases where the City Council finds that it is reasonably necessary or expedient to extend such water supply and distribution system, sewage collection and disposal system, or both such systems, to serve, in whole or in part, property in Durham County when the Board of Commissioners of the County of Durham requests such extension or extensions."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 323

CHAPTER 688

AN ACT TO PROVIDE THAT OBSERVERS AT A PRECINCT'S VOTING PLACE NEED NOT BE REGISTERED VOTERS IN THAT PRECINCT BUT SHALL BE REGISTERED VOTERS IN THE COUNTY AND TO AMEND THE LAW GOVERNING ACCESS TO VOTER REGISTRATION INFORMATION.

The General Assembly of North Carolina enacts:

Section I. G.S. 163-45 reads as rewritten:

"§ 163-45. *Observers; appointment.*

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct county for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the

day of a primary or general election, the chairman shall deliver one copy of the list to the chief judge for each affected precinct. He shall retain the other copy. The chairman, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart."

Sec. 2. G.S. 163-82.10 reads as rewritten:

"§ 163-82.10. *Official record of voter registration.*

(a) Application Form Becomes Official Record. -- A completed and signed registration application form described in G.S. 163-82.3, once approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county and shall keep them in a place where they are secure.

(b) Access to Registration Records. -- Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall

consist of nine track tape or 3.5-inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

- (2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age or date of birth or both, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars (\$25.00).

(c) Free Lists. -- Free lists of all registered voters in the county shall be provided in the following cases:

- (1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
 - a. The State chair of each political party; and
 - b. The county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.
- (2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, and ~~precinct~~ precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days

after receiving them. As used in this section, 'political party' means a political party as defined in G.S. 163-96."

Sec. 3. This act becomes effective July 1, 1996. Section 1 applies to all primaries and elections occurring on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 684

CHAPTER 689**AN ACT AMENDING THE CHARTER OF DURHAM TO AUTHORIZE THE MAKING OF EMERGENCY REPAIRS TO NONRESIDENTIAL BUILDINGS.**

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, is amended by adding the following new section:

"Section. 102.5. Emergency Repairs to Nonresidential Buildings.

(a) The City Council may, by ordinance, authorize the housing appeals board to adopt ordinances ordering the housing inspector to repair, alter, or improve any building which appears to the inspector to be especially dangerous to public safety or welfare because of, but not limited to, its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes. Any ordinance adopted under this section shall provide that the City Manager must approve such repairs, alterations, or improvements and that at least 72-hours notice will be given to the owner of and parties in interest in such building prior to the making of any such repairs, alterations, or improvements by the housing inspector.

(b) The amount of the cost of such repairs, alterations, or improvements shall be a lien against the real property upon which such cost was incurred, which lien shall be filed, have the same priority, and shall be collected as provided by Article 10 of Chapter 160A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 709

CHAPTER 690

AN ACT TO ALLOW THE CONSOLIDATION OF HUMAN SERVICES BY COUNTIES, TO MAKE PROVISIONS RELATIVE TO THE STATE AND FEDERAL FUNDING STREAMS FOR CONSOLIDATED HUMAN SERVICES FUNCTIONS, TO PROVIDE THAT THE MEMBERSHIP OF A CONSOLIDATED HUMAN SERVICES BOARD SHALL BE APPOINTED SOLELY BY THE BOARD OF COUNTY COMMISSIONERS, AND TO CHANGE THE STATUS OF COUNTY EMPLOYEES OF A CONSOLIDATED COUNTY HUMAN SERVICES AGENCY WITH REGARD TO THEIR COVERAGE UNDER THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 1A. Consolidated County Human Services.

"§ 143B-139.7. Consolidated county human services funding.

(a) The Secretary of the Department of Human Resources shall adopt rules and policies to provide that:

- (1) Any dedicated funding streams for local public health services, for social services, and for mental health, developmental disabilities, and substance abuse services may flow to a consolidated county human services agency and the consolidated human services board in the same manner as that for funding nonconsolidated county human services, unless a different manner of allocation is otherwise required by law.
- (2) The fiscal accountability and reporting requirements pertaining to local health boards, social services boards, and area mental health authority boards apply to a consolidated human services board.

(b) The Secretary of the Department of Human Resources may adopt any other rule or policy required to facilitate the provision of human services by a consolidated county human services agency or a consolidated human services board.

(c) For the purposes of this section, 'consolidated county human services agency' means a county human services agency created pursuant to G.S. 153A-77(b). 'Consolidated human services board' means a county human services board established pursuant to G.S. 153A-77(b)."

Sec. 2. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.6. Consolidated county human services funding.

(a) The Secretary of the Department of Environment, Health, and Natural Resources shall adopt rules and policies to provide that:

- (1) Any dedicated funding streams for local public health services may flow to a consolidated county human services agency and the consolidated human services board in the same manner as that for funding nonconsolidated county human services, unless a different manner of allocation is otherwise required by law.
- (2) The fiscal accountability and reporting requirements pertaining to local health boards apply to a consolidated human services board.

(b) The Secretary of the Department of Environment, Health, and Natural Resources may adopt any other rule or policy required to facilitate the provision of local public health services by a consolidated county human services agency or a consolidated human services board.

(c) For the purposes of this section, 'consolidated county human services agency' means a county human services agency created pursuant to G.S. 153A-77(b). 'Consolidated human services board' means a county human services board established pursuant to G.S. 153A-77(b)."

Sec. 3. G.S. 153A-77 reads as rewritten:

"§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This ~~section~~ subsection shall apply to the board of health, the social services board, area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse area board and any other commission, board or agency appointed by the board of county commissioners ~~and/or~~ or acting under and pursuant to authority of the board of county commissioners of said county. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

- (1) Consolidate the provision of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;
- (2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;
- (3) Create a consolidated county human services agency having the authority to carry out the functions of the local health department, the county department of social services, and the area mental health, developmental disabilities, and substance abuse services authority; and
- (4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

- (1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery

from substance abuse, one family member of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

- (2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.
- (3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.
- (4) One member of the board of county commissioners.
- (5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi) failure to maintain qualifications for appointment required under this subsection. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

- (d) The consolidated human services board shall have authority to:

- (1) Set fees for departmental services based upon recommendations of the human services director. Fees set under this subdivision are subject to the same restrictions on amount and scope that would apply if the fees were set by a county board of health, a county board of social services, or a mental health, developmental disabilities, and substance abuse area authority.
- (2) Assure compliance with laws related to State and federal programs.
- (3) Recommend creation of local human services programs.
- (4) Adopt local health regulations and participate in enforcement appeals of local regulations.
- (5) Perform regulatory health functions required by State law.
- (6) Act as coordinator or agent of the State to the extent required by State or federal law.
- (7) Plan and recommend a consolidated human services budget.
- (8) Conduct audits and reviews of human services programs, including quality assurance activities, as required by State and federal law or as may otherwise be necessary periodically.
- (9) Advise local officials through the county manager.
- (10) Perform public relations and advocacy functions.
- (11) Protect the public health to the extent required by law.
- (12) Perform comprehensive mental health services planning.
- (13) Develop dispute resolution procedures for human services contractors and clients and public advocates, subject to applicable State and federal dispute resolution procedures for human services programs, when applicable.

Except as otherwise provided, the consolidated human services board shall have the powers and duties conferred by law upon a board of health, a social services board, and an area mental health, developmental disabilities, and substance abuse services board.

Local employees who serve as staff of a consolidated county human services agency are subject to county personnel policies and ordinances only and are not subject to the provisions of the State Personnel Act.

(e) The human services director of a consolidated county human services agency shall be appointed and dismissed by the county manager with the advice and consent of the consolidated human services board. The human services director shall report directly to the county manager. The human services director shall:

- (1) Appoint staff of the consolidated human services agency with the county manager's approval.
- (2) Administer State human services programs.
- (3) Administer human services programs of the local board of county commissioners.
- (4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.
- (5) Plan the budget of the consolidated human services agency.
- (6) Advise the board of county commissioners through the county manager.

- (7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.
- (8) Act as an agent of and liaison to the State, to the extent required by law.

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, and a director of an area mental health, developmental disabilities, and substance abuse services authority.

(f) This section applies to counties with a population in excess of 425,000."

Sec. 4. G.S. 7A-289.24 reads as rewritten:

"§ 7A-289.24. *Who may petition.*

A petition to terminate the parental rights of either or both parents to his, her, or their minor child may only be filed by:

- (1) Either parent seeking termination of the right of the other parent; or
- (2) Any person who has been judicially appointed as the guardian of the person of the child; or
- (3) Any county department of social ~~services or~~ services, consolidated county human services agency, or licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction; or
- (4) Any county department of social ~~services or~~ services, consolidated county human services agency, or licensed child-placing agency to which the child has been surrendered for adoption by one of the parents or by the guardian of the person of such child, pursuant to G.S. 48-9(a)(1); or
- (5) Any person with whom the child has resided for a continuous period of two years or more next preceding the filing of the petition; or
- (6) Any guardian ad litem appointed to represent the minor child pursuant to G.S. 7A-586, who has not been relieved of this responsibility and who has served in this capacity for at least one continuous year; or
- (7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes."

Sec. 5. G.S. 108A-1 reads as rewritten:

"§ 108A-1. *Creation.*

Every county shall have a board of social services or a consolidated human services board created pursuant to G.S. 153A-77(b) which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. Provided, however, county policies for the program of medical assistance shall be established in conformity with the rules and regulations of the Department of Human Resources."

Sec. 6. G.S. 108A-2 reads as rewritten:

"§ 108A-2. *Size.*

The county board of social services ~~in each~~ of a county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the Department of Human Resources."

Sec. 7. G.S. 108A-3 reads as rewritten:

"§ 108A-3. Method of appointment; residential qualifications; fee or compensation for ~~services~~ services; consolidated human services board appointments.

(a) ~~Three-Member Board.~~ Board. -- The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) ~~Five-Member Board.~~ Board. -- The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108A-8.

(d) Consolidated Human Services Board. -- The board of county commissioners shall be the sole appointing authority for members of a consolidated human services board and shall appoint those members in accordance with G.S. 153A-77(c)."

Sec. 8. G.S. 108A-7 reads as rewritten:

"§ 108A-7. Meetings.

The board of social services of ~~each~~ a county shall meet at least once per month, or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. A consolidated county human services board shall meet in accordance with the provisions of G.S. 153A-77."

Sec. 9. Article 1 of Chapter 108A of the General Statutes is amended by adding a new Part to read:

"Part 2A. Consolidated Human Services.

"§ 108A-15.1. Consolidated human services board; human services director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under

G.S. 153A-77, a consolidated human services board created pursuant to G.S. 153A-77(b) shall have the responsibility and authority to carry out the programs established in this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources in the same manner as a county social services board.

(b) In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of a county board of social services as provided by G.S. 108A-9, except that the consolidated human services board may not:

(1) Appoint the human services director.

(2) Transmit or present the budget for social services programs.

(c) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of a director of social services provided by G.S. 108A-14, except that the human services director may:

(1) Serve as the executive officer of the consolidated human services board only to the extent and in the manner authorized by the county manager.

(2) Appoint staff of the consolidated human services agency only upon the approval of the county manager."

Sec. 10. G.S. 122C-116 reads as rewritten:

"§ 122C-116. Status of area ~~authority~~ authority; status of consolidated human services agency.

(a) An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

(b) A consolidated human services agency is a department of the county."

Sec. 11. G.S. 122C-123 reads as rewritten:

"§ 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10), G.S. 122C-117(a)(1), and ~~G.S. 122C-131~~, G.S. 122C-127, and G.S. 122C-131, other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities."

Sec. 12. Article 4 of Chapter 122C of the General Statutes is amended by adding a new Part to read:

"Part 2A. Consolidated Human Services.

"§ 122C-127. Consolidated human services board; human services director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S. 153A-77, a consolidated human services agency shall have the responsibility and authority set forth in G.S. 122C-117(a) to carry out the programs established in this Chapter in conformity with the rules and regulations of the Department and under the supervision of the Secretary in the same manner as an area authority. In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of the governing unit of an area authority as provided by

G.S. 122C-117(b), except that the consolidated human services board may not:

- (1) Appoint the human services director.
- (2) Transmit or present the budget for social services programs.
- (3) Enter into contracts, including contracts to provide services to governmental or private entities, unless specifically authorized to do so by the board of county commissioners in accordance with county contracting policies and procedures.

(b) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of an area director as provided by G.S. 122C-121, except that the human services director may:

- (1) Serve as the executive officer of the consolidated human services board only to the extent and in the manner authorized by the county manager.
- (2) Appoint staff of the consolidated human services agency only upon the approval of the county manager.

The human services director is not an employee of the area board, but serves as an employee of the county under the direct supervision of the county manager."

Sec. 13. G.S. 130A-34 reads as rewritten:

"§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, establish a consolidated human services agency pursuant to G.S. 153A-77, participate in a district health ~~department~~ department, or contract with the State for the provision of public health services."

Sec. 14. Article 1 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 1A. Consolidated Human Services Agency.

"§ 130A-43. Consolidated human services agency; board; director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S. 153A-77, a consolidated human services agency created pursuant to G.S. 153A-77 shall have the responsibility to carry out the duties of a local health department and the authority to administer the local public health programs established in this Chapter in the same manner as a local health department.

(b) In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of a local board of health as provided by G.S. 130A-39, except that the consolidated human services board may not:

- (1) Appoint the human services director.
- (2) Transmit or present the budget for local health programs.

(c) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of a local health director provided by G.S. 130A-41, except that the human services director may:

- (1) Serve as the executive officer of the consolidated human services agency only to the extent and in the manner authorized by the county manager.
- (2) Appoint staff of the consolidated human services agency only upon the approval of the county manager."

Sec. 15. G.S. 126-5(a) reads as rewritten:

"(a) The provisions of this Chapter shall apply to:

- (1) All State employees not herein exempt, and
- (2) To all employees of ~~area~~ the following local entities:
 - a. Area mental health, mental retardation, developmental disabilities, and substance abuse authorities, and to employees of local authorities.
 - b. Local social services departments, public departments.
 - c. Local public health departments, and local departments.
 - d. Local emergency management agencies that receive federal grant-in-aid funds; and the provision of this Chapter may apply to such other county funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

- (3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine."

Sec. 16. Any county which consolidates human services pursuant to G.S. 153A-77(b) shall report by January 1, 1998, and annually thereafter, to the Chairs of the House Appropriations Subcommittees on Human Resources and Natural and Economic Resources and the Chairs of the Senate Appropriations Committees on Human Resources and Natural and Economic Resources, to the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division regarding the county's implementation of consolidated human services, including:

- (1) The effectiveness of the county's human services delivery under the consolidated system.
- (2) The level of consumer satisfaction with consolidated human services as indicated by individuals and advocacy groups.
- (3) The county's maintenance of efforts with respect to mental health services and other human services.
- (4) The amount of administrative savings, if any, realized as a result of the consolidation.
- (5) The county's success concerning reinvestment of savings, excluding administrative savings, realized as a result of the human services consolidation with an estimate of the amount saved and the impact of those savings on human services programs and service delivery.

Sec. 17. This act becomes effective July 1, 1996. Section 16 of this act expires January 1, 2001.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1179

CHAPTER 691

AN ACT TO PROVIDE A GRACE PERIOD FOR MILITARY PERSONNEL TO LIST AND PAY PROPERTY TAXES AFTER DEPLOYMENT IN CONNECTION WITH OPERATION JOINT ENDEAVOR.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 105-360 and G.S. 105-330.4, an individual liable for property taxes for the 1995-96 tax year or a subsequent tax year who, on or after December 4, 1995, was a member of the armed forces or the armed forces reserves and was deployed outside the State in connection with performing "Operation Joint Endeavor services", is allowed 90 days after the end of the individual's deployment to pay the property taxes at par. For these individuals, the taxes do not become delinquent until after the end of the 90-day period provided in this act, and an individual who pays the property taxes before the end of the 90-day period is not liable for interest on the taxes for the applicable tax year. If the individual does not pay the taxes before the end of the 90-day period, interest shall accrue on the taxes according to the schedule provided in G.S. 105-360 or G.S. 105-330.4, as appropriate, as if no grace period had been allowed under this act. If the individual owns property jointly or by the entirety with his or her spouse, the extension provided in this section applies to both spouses.

Sec. 2. Notwithstanding G.S. 105-307, an individual required to list property for taxation for the 1996-97 tax year or a subsequent tax year who, on or after December 4, 1995, was a member of the armed forces or the armed forces reserves and was deployed outside the State as a result of performing "Operation Joint Endeavor services", is allowed 90 days after the end of the individual's deployment to list the property. For these individuals, the listing period for the applicable tax year is extended until the end of the 90-day period provided in this act, and an individual who lists the property before the end of the 90-day period is not subject to civil or criminal penalties for failure to list the property for that tax year. If the individual owns property jointly or by the entirety with his or her spouse, the extension provided in this section applies to both spouses.

Sec. 3. As used in this act, the term "Operation Joint Endeavor services" has the meaning provided in federal Pub. L. No. 104-117 (1996).

Sec. 4. This act is effective retroactively as of December 4, 1995. If any penalty or interest forgiven by this act has been paid before the date this act is ratified, the taxing unit shall refund the penalty or interest.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1244

CHAPTER 692

AN ACT TO EXCLUDE THE WALLACE AIRPORT FROM CONSIDERATION AS A SATELLITE AREA IN DETERMINING THE TOTAL NONCONTIGUOUS TERRITORY THAT THE TOWN OF WALLACE MAY ANNEX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city. For the purposes of this subdivision, Henderson Field is not considered a satellite area of the Town of Wallace."

Sec. 2. This act applies only to the Town of Wallace.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1393

CHAPTER 693

AN ACT TO CLARIFY THE STATUS OF CERTIFIED EMPLOYEES OF THE MECKLENBURG COUNTY AND CATAWBA COUNTY SHERIFFS' OFFICES FOR ELIGIBILITY FOR BENEFITS AFFORDED TO LAW ENFORCEMENT OFFICERS THROUGH THE NORTH CAROLINA LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 532 of the 1995 Session Laws reads as rewritten:

"Section 1. For the purposes of benefits afforded on account of membership in the Local Governmental Employees' Retirement System, a 'law enforcement officer' as defined in G.S. 128-21(11b) and a 'law-enforcement officer' as defined in G.S. 143-166.50(a)(3) shall include an employee of the Mecklenburg Sheriff's ~~Department serving as a sworn and certified jailer or telecommunicator.~~ Office who possesses the power of arrest, who has taken the law enforcement officer oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a deputy sheriff by the North Carolina Sheriffs' Education and Training Standards Commission under the provisions of Chapter 17E of the General Statutes. 'Law enforcement officer' also means the sheriff of the county."

Sec. 2. Section 1 of Chapter 306 of the 1995 Session Laws reads as rewritten:

"Section 1. For the purposes of benefits afforded on account of membership in the Local Governmental Employees' Retirement System, a 'law enforcement officer' as defined in G.S. 128-21(11b) and a 'law-enforcement officer' as defined in G.S. 143-166.50(a)(3) shall include an employee of the Catawba Sheriff's ~~Department serving as a sworn and certified jailer or telecommunicator.~~ Office who possesses the power of arrest, who has taken the law enforcement officer oath administered under the authority of the State as prescribed by G.S. 11-11, and who is certified as a deputy sheriff by the North Carolina Sheriffs' Education and Training Standards Commission under the provisions of Chapter 17E of the General Statutes. 'Law enforcement officer' also means the sheriff of the county."

Sec. 3. This act is effective upon ratification, with Section 1 applying to Mecklenburg County sheriff's personnel who were employed by the Mecklenburg County Sheriff's Office between July 1, 1994, and the effective date of this act, and Section 2 applying to Catawba County sheriff's personnel who were employees of the Catawba County Sheriff's Department and who were enrolled in the North Carolina Local Governmental Employees' Retirement System on June 20, 1995.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1162

CHAPTER 694

AN ACT TO PROHIBIT THE USE OF INELIGIBLE VOTER'S TESTIMONY ABOUT HOW THE VOTE WAS CAST; TO GIVE THE PERSON PROTESTING THE ELECTION THE RIGHT TO CALL FOR A NEW ELECTION WHEN THE NUMBER OF INELIGIBLE VOTERS EXCEEDS THE MARGIN OF VICTORY; AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-33 reads as rewritten:

"§ 163-33. *Powers and duties of county boards of elections.*

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

- (1) To make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.
- (2) To appoint all chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any chief judge, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.
- (3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised. Provided that in any hearing on an irregularity no board of elections shall consider as evidence the testimony of a voter who cast a ballot, which ballot

that voter was not eligible to cast, as to how that voter voted on that ballot.

- (4) As provided in G.S. 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.
- (5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.
- (6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, pollbooks, and other required papers and materials to the voting places.
- (7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and pollbooks, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.
- (8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20-day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.
- (9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.
- (10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. 163-72.3.
- (11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.
- (12) To perform such other duties as may be prescribed by this Chapter or the rules of the State Board of Elections.
- (13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records,

pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility."

Sec. 2. G.S. 163-22.1 reads as rewritten:

"§ 163-22.1. *Power of State Board to order new elections.*

(a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county or municipal board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county or municipal board of elections.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section.

(b) Special Circumstances in Which New Election Shall Be Called. -- Notwithstanding the provisions of subsection (a) of this section, if

- (1) The number of ineligible voters who voted in the election was sufficient to change the result of the election; and
- (2) The way those votes were cast cannot be determined by examining the ballots,

then the person protesting the election shall have the right to a new election.

(c) Special Circumstances in Which Tie Shall Be Declared. -- Notwithstanding the provisions of subsection (a) of this section, if the circumstances described in subsection (b) of this section obtain except that the number of ineligible voters was sufficient to change the result to a tie but not result in a different winner, then the person protesting the election shall have the right to have a tie declared by the State Board. If a tie is declared, the provisions of law governing tied elections shall apply."

Sec. 3. This act is effective upon ratification and applies to all votes cast on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1182

CHAPTER 695

AN ACT TO DELETE THE UNNECESSARY "L" ENDORSEMENT FOR A COMMERCIAL DRIVERS LICENSE.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 20-37.16(c) reads as rewritten:

"(c) Endorsements. -- The endorsements required to drive certain motor vehicles are as follows:

<u>Endorsement</u>	<u>Vehicles That Can Be Driven</u>
H	Vehicles carrying hazardous materials, other than tank vehicles
L	Double trailers that are longer combination vehicles
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
T	Double trailers other than longer combination vehicles
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1094

CHAPTER 696

AN ACT TO PROHIBIT THE IMPOSITION OF A FAILURE TO PAY PENALTY WHEN ADDITIONAL TAX DUE IS PAID AT THE TIME AN AMENDED RETURN IS FILED OR WITHIN THIRTY DAYS AFTER THE ADDITIONAL TAX WAS ASSESSED.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 105-236(4) reads as rewritten:

"(4) Failure to Pay Tax When Due. -- In the case of failure to pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars (\$5.00). This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax."

Sec. 2. This act becomes effective January 1, 1997, and applies to taxes due on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1272

CHAPTER 697

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF STATESVILLE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the City of Statesville:

Beginning at a point in the northeast corner of Lot 42, also being the southeast corner of Lot 43 of Phase I of Fox Den Country Club Development on Fox Den Circle, thence with the northern margin of Fox Den Circle the following courses and distances:

1. On a curve to the right with a radius of 1470.00 feet, whose chord is South 36 deg. 53 min. .01 sec. West 0.95 feet, a distance of 0.95 feet to a point,
2. On a curve to the right with a radius of 1470.00 feet, whose chord is South 37 deg. 20 min. 10 sec. West 21.89 feet, a distance of 21.89 feet to a point,
3. On a curve to the right with a radius of 1470.00 feet, whose chord is South 39 deg. 30 min. 41 sec. West 89.71 feet, a distance of 89.72 feet to a point,
4. On a curve to the right with a radius of 1470.00 feet, whose chord is South 41 deg. 42 min. 03 sec. West 22.62 feet, a distance of 22.62 feet to a point,
5. On a curve to the right with a radius of 1470.00 feet, whose chord is South 42 deg. 58 min. 31 sec. West 42.78 feet, a distance of 42.78 feet to a point,
6. On a curve to the right with a radius of 500.00 feet, whose chord is South 46 deg. 11 min. 36 sec. West 41.61 feet, a distance of 41.62 feet to a point,
7. Thence South 48 deg. 34 min. 41 sec. West 224.97 feet to a point,
8. On a curve to the right with a radius of 500.00 feet, whose chord is South 51 deg. 31 min. 37 sec. West 51.29 feet, a distance of 51.31 feet to a point,
9. On a curve to the right with a radius of 500.00 feet, whose chord is South 58 deg. 40 min. 59 sec. West 73.51 feet, a distance of 73.58 feet to a point,

10. On a curve to the right with a radius of 1008.50 feet, whose chord is South 61 deg. 46 min. 33 sec. West 40.76 feet, a distance of 40.76 feet to a point,
11. On a curve to the right with a radius of 1460.00 feet, whose chord is South 61 deg. 54 min. 45 sec. West 65.96 feet, a distance of 65.97 feet to a point,
12. On a curve to the right with a radius of 30.00 feet, whose chord is North 70 deg. 46 min. 20 sec. West 43.18 feet, a distance of 48.20 feet to a point, at the intersection of Amity Hill Road, SR 2342,
13. Thence with the eastern margin of Amity Hill Road, South 24 deg. 45 min. 04 sec. East 139.07 feet to a point,

Thence with the southern margin of Fox Den Circle, the following courses and distances:

14. On a curve to the right with a radius of 30.00 feet, whose chord is North 19 deg. 19 min. 06 sec. East 41.73 feet, a distance of 46.15 feet to a point,
15. On a curve to the left with a radius of 1539.00 feet, whose chord is North 62 deg. 8 min. 50 sec. East 66.64 feet, a distance of 66.65 feet to a point,
16. On a curve to the left with a radius of 511.00 feet, whose chord is North 53 deg. 40 min. 29 sec. East 105.27 feet, a distance of 105.46 feet to a point,
17. On a curve to the left with a radius of 991.50 feet, whose chord is North 48 deg. 10 min. 13 sec. East 14.11 feet, a distance of 14.11 feet to a point,
18. Thence North 48 deg. 34 min. 35 sec. East 223.35 feet to a point,
19. Thence North 47 deg. 54 min. 47 sec. East 108.40 feet to a point,
20. On a curve to the left with a radius of 1530.00 feet, whose chord is North 41 deg. 28 min. 11 sec. East 141.54 feet, a distance of 141.59 feet to a point,
21. On a curve to the left with a radius of 1530.00 feet whose chord is North 38 deg. 17 min. 16 sec. East 28.03 feet, a distance of 28.03 feet to a point,
22. On a curve to the left with a radius of 1530.00 feet whose chord is North 37 deg. 20 min. 10 sec. East 22.78 feet, a distance of 22.78 feet to a point,
23. On a curve to the left with a radius of 1530.00 feet, whose chord is South 36 deg. 53 min. 27 sec. West 0.61 feet, a distance of 0.61 feet to a point,
24. Thence North 52 deg. 43 min. 03 sec. West 60.06 feet to the point of BEGINNING, containing 47,095 square feet, as surveyed by Don Allen Associates, May 16, 1996.

Sec. 2. This act becomes effective June 30, 1996

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 540

CHAPTER 698

AN ACT TO PROVIDE FOR ELECTION OF ALL THE MEMBERS OF
THE ROCKINGHAM CITY COUNCIL FOR FOUR-YEAR TERMS.

The General Assembly of North Carolina enacts:

Section 1. Section 4.1(f) of the Charter of the City of Rockingham, being Chapter 1265 of the Session Laws of 1973, reads as rewritten:

~~"(f) The city council shall consist of five (5) members. In the regular municipal election on the first Tuesday after the first Monday of November, 1975, two candidates shall be elected for four-year terms, and one candidate shall be elected for a two-year term. In the regular municipal election on the first Tuesday after the first Monday of November, 1977, and each regular municipal election held biennially thereafter, two candidates shall be elected for four-year terms, and one candidate for a two-year term. In the regular municipal election in 1995 and quadrennially thereafter, three candidates shall be elected for four-year terms. In the regular municipal election in 1997 and quadrennially thereafter, two candidates shall be elected for four-year terms. Members shall serve until their successors are elected and qualify. Candidates for election as members of the city council shall announce, at the time of filing notice of candidacy, the length of term for which they are a candidate and shall be elected only for the term for which they have announced. In each general election, the two candidates receiving the highest number of votes for the four-year terms, and the one candidate receiving the highest number of votes for the two-year term shall be declared elected for these respective terms. Elections are conducted by the nonpartisan plurality method and the results determined in accordance with G.S. 163-292."~~

Sec. 2. This act has the affect of extending to four years the term of office of the person elected to the Rockingham City Council in 1995 for a two-year term, as if this act had been ratified prior to the date of the election.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1201

CHAPTER 699

AN ACT TO PERMIT THE LUMBERTON FIREMEN'S
SUPPLEMENTARY PENSION FUND TO INCREASE THE
MONTHLY BENEFITS TO ITS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 792 of the 1991 Session Laws reads as rewritten:

"Sec. 4. Any full time paid member of the fire department who retires or is retired under the provisions of Section 3 of this act shall receive monthly for the remainder of his life from the 'Supplementary Pension Fund' an amount equal to ~~two dollars and fifty cents (\$2.50)~~ three dollars and twenty-

five cents (\$3.25) for each full year of service with the Fire Department, with the exception that, if a person who has been retired as a member of the Lumberton Fire Department is receiving disability retirement benefits under the provisions of the North Carolina Local Governmental Employees' Retirement System as set out in Article 3 of Chapter 128 of the General Statutes and as participated in by the City of Lumberton, that person shall receive from the Fund the benefit amount equivalent to which a person retired with 30 years of service is entitled. If, for any reason, the Fund created and made available for any purpose covered by this Chapter shall be insufficient to pay in full any pension benefits, or other changes, then all benefits and payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced."

Sec. 2. None of the provisions of this act shall create any liability for the City of Lumberton's Firemen's Supplementary Fund unless there are sufficient current assets in the Fund to pay fully for the liability. Under no circumstances shall the State incur any liability as a result of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1116

CHAPTER 700

AN ACT TO ABOLISH THE CLINTON-SAMPSON AGRI-CIVIC CENTER COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Clinton-Sampson Agri-Civic Center Commission, established by Section 2 of Chapter 943 of the 1985 Session Laws, is abolished.

Sec. 2. (a) All property, real and personal and mixed, including accounts receivable, belonging to the Clinton-Sampson Agri-Civic Center Commission shall by operation of law vest in, belong to, and be the property of the County of Sampson.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Clinton-Sampson Agri-Civic Center Commission shall vest in and remain and inure to the benefit of the County of Sampson.

(c) All actions, suits, and proceedings pending against, or having been instituted by the Clinton-Sampson Agri-Civic Center Commission shall not be abated by this act, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if the Commission had not been abolished, and the County of Sampson shall be a party to all such actions, suits, and proceedings in the place and stead of the Clinton-Sampson Agri-Civic Center Commission and shall pay or cause to be paid any judgments rendered against the Clinton-Sampson Agri-Civic Center Commission in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(d) All obligations of the Clinton-Sampson Agri-Civic Center Commission, shall be assumed by the County of Sampson, and all such obligations are hereby constituted obligations of the County of Sampson.

Sec. 3. Section 2 of Chapter 943 of the 1985 Session Laws, is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1132

CHAPTER 701

AN ACT REQUIRING THE PAYMENT OF DELINQUENT TAXES IN CURRITUCK COUNTY BEFORE THE ISSUANCE BY THE COUNTY OF SUBDIVISION APPROVAL.

The General Assembly of North Carolina enacts:

Section 1. A county may deny approval for the subdivision of property pursuant to the county's zoning, subdivision, or unified development ordinance whenever delinquent taxes are owed on:

(1) The property to be subdivided; or

(2) Any other contiguous property owned by the same persons requesting subdivision approval.

Sec. 2. This act applies to Currituck County only.

Sec. 3. This act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1205

CHAPTER 702

AN ACT TO ALLOW THE COUNTY OF DARE TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S.153A-158.1(e) reads as rewritten:

"(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Greene, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Wake, and Watauga Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1234

CHAPTER 703

AN ACT TO ALLOW MARTIN, PERSON, AND VANCE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) **Board of Education May Contract for Construction.** -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) **Scope.** -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Greene, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Martin, Moore, Nash, Orange, Pasquotank, Pender, Person, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Vance, Wake, and Watauga Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1286

CHAPTER 704

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF PUBLIC ROADS IN NORTHAMPTON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird with a firearm on, from, or across the right-of-way of any public road or highway in Northampton County.

Sec. 2. Violation of this act is a Class 3 misdemeanor.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act becomes effective December 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1313

CHAPTER 705

AN ACT TO ALLOW WILSON COUNTY TO ACQUIRE PROPERTY
FOR USE BY THE COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S.153A-158.1(e) reads as rewritten:

"(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Greene, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Wake, Wilson, and Watauga Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1314

CHAPTER 706

AN ACT TO ALLOW HALIFAX, NASH, AND WILSON COUNTIES TO
ACQUIRE AND OTHERWISE MAKE AVAILABLE PROPERTY FOR
USE BY THE BOARD OF TRUSTEES OF A COMMUNITY
COLLEGE WITHIN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 613 of the 1993 Session Laws, as amended by Chapters 154 and 399 of the 1995 Session Laws, is rewritten to read:

"Sec. 3. This act applies only to Gaston, Greene, Halifax, Montgomery, Nash, Sampson, and Wilson Counties."

Sec. 2. The amendments to G.S. 153A-158 made by Chapter 613 of the 1993 Session Laws and Chapter 399 of the 1995 Session Laws apply to Halifax County, Nash County, and Wilson County as well as to Gaston, Greene, Montgomery, and Sampson Counties.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1357

CHAPTER 707

AN ACT TO EXEMPT THE ANNEXATION OF THE EDENTON AIRPORT FROM THE CEILING ON SATELLITE ANNEXATIONS BY THE TOWN OF EDENTON.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Edenton, being Chapter 815 of the 1985 Session Laws, is amended by adding a new section to read:

"Sec. 1.4. **Satellite annexations.** The airport property described in Chapter 989 of the 1984 Session Laws, included in the corporate limits of the Town of Edenton described in Section 1.3 of Chapter 815 of the 1985 Session Laws, shall not be included in any calculations made under G.S. 160A-58.1(b)(5)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1383

CHAPTER 708

AN ACT TO AUTHORIZE THE TOWN OF CERRO GORDO TO CONVEY BY PRIVATE SALE CERTAIN PROPERTY TO EUGENE GREEN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Cerro Gordo may convey at private sale, with or without monetary consideration, any and all of its right, title, and interest in the following described property, known as "Tract 2", to Eugene Green. BEING all of Lot 2 as described in survey for Eugene Green, said tract being a portion of the property described in Deed recorded in Deed Book 366, Page 590, Columbus County, North Carolina Registry, and being a portion of the lands described in Plat Book 41, Page 54, Columbus County, North Carolina Registry and being more particularly described as follows: BEGINNING at an existing iron pipe located in the Southwest corner of the aforesaid Tract No. 2 where the same intersects with the Southeast corner of the Rodney L. Hammond property as described in Deed Book 262, Page 516, Columbus County, North Carolina Registry; thence from said existing iron pipe and beginning point North 84 degrees 20' 14" West 279.80 feet to a point in the Western line of the Eugene Green property and the Rodney L. Hammond property described in Deed Book 369 Page 802 Columbus County, North Carolina Registry; thence from said point North 06 degrees 18' 37" West 3.968 feet to a point; thence from said point North 81 degrees 10' 30" East 95.094 feet to an existing iron pipe located in the boundary line of the Cerro Gordo Baptist Church lot as described in Deed Book 203 Page 743 and Plat Book 12 Page 122; thence from said existing iron and along the aforesaid property line of the Eugene Green property and Cerro Gordo Baptist Church lot property North 02 degrees 39' 55" West 51.028 feet to a new iron pipe in a ditch; thence from said new iron pipe South 83

degrees 24' 44" East 196.460 feet to a new iron pipe; thence from said new iron pipe South 06 degrees 35' 16" West 75.000 feet to an existing iron pipe, to-wit the point and place of beginning.

Sec. 2. The Mayor and the Town Council of Cerro Gordo may execute the deed conveying the property described herein.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1397

CHAPTER 709

AN ACT AUTHORIZING COLUMBUS COUNTY TO ENTER INTO
LEASES FOR TERMS NOT LONGER THAN TWENTY YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-272 reads as rewritten:

"§ 160A-272. *Lease or rental of property.*

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than ~~10 years~~ 20 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than ~~10 years~~ 20 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property."

Sec. 2. This act applies to Columbus County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1424

CHAPTER 710

AN ACT TO ADD CASWELL AND PERSON COUNTIES TO THOSE
COUNTIES AUTHORIZED TO ESTABLISH THE BOUNDARIES
BETWEEN AND AMONG THEM BY THE USE OF
ORTHOPHOTOGRAPHY.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 357 of the 1985 Session Laws reads as rewritten:

"Sec. 5. Section 4 of this act applies to Orange Caswell, Orange, Person, and Chatham Counties only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1258

CHAPTER 711

AN ACT TO AUTHORIZE THE UNIVERSITY OF NORTH CAROLINA TO RETAIN THE NET PROCEEDS FROM SALE OF THE FORMER RESIDENCE OF THE CHANCELLOR OF WINSTON-SALEM STATE UNIVERSITY FOR APPLICATION TOWARD PURCHASE OF THE SUCCESSIVE RESIDENCE FOR THE CHANCELLOR.

The General Assembly of North Carolina enacts:

Section 1. The University of North Carolina is authorized to retain the net proceeds from sale of the house and associated land at 631 Banner Avenue, Winston-Salem, formerly used as the residence of the Chancellor of Winston-Salem State University, and to apply the net proceeds toward purchase of a successive residence for the Chancellor.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 359

CHAPTER 712

AN ACT TO MAKE IT A FELONY OFFENSE TO IMPERSONATE A LAW ENFORCEMENT OFFICER BY UNLAWFULLY OPERATING A MOTOR VEHICLE WITH AN OPERATING BLUE LIGHT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-277 reads as rewritten:

"§ 14-277. *Impersonation of a law-enforcement or other public officer.*

(a) No person shall falsely represent to another that he is a sworn law-enforcement officer. As used in this section, a person represents that he is a sworn law-enforcement officer if he:

- (1) Verbally informs another that he is a sworn law-enforcement officer, whether or not the representation refers to a particular agency;
- (2) Displays any badge or identification signifying to a reasonable individual that the person is a sworn law-enforcement officer, whether or not the badge or other identification refers to a particular law-enforcement agency; or
- (3) Unlawfully operates a vehicle on a public street, highway or public vehicular area with an operating red or blue light as defined in G.S. 20-130.1, G.S. 20-130.1(a).

- (4) Unlawfully operates a vehicle on a public street, highway, or public vehicular area with an operating blue light as defined in G.S. 20-130.1(c).

(b) No person shall, while falsely representing to another that he is a sworn law-enforcement officer, carry out any act in accordance with the authority granted to a law-enforcement officer. For purposes of this section, an act in accordance with the authority granted to a law-enforcement officer includes:

- (1) Ordering any person to remain at or leave from a particular place or area;
- (2) Detaining or arresting any person;
- (3) Searching any vehicle, building, or premises, whether public or private, with or without a search warrant or administrative inspection warrant;
- (4) Unlawfully operating a vehicle on a public street or highway or public vehicular area equipped with an operating red ~~or blue~~ light or siren in such a manner as to cause a reasonable person to yield the right-of-way or to stop his vehicle in obedience to such red ~~or blue~~ light or ~~siren~~, siren;
- (5) Unlawfully operating a vehicle on a public street or highway or public vehicular area equipped with an operating blue light in such a manner as to cause a reasonable person to yield the right-of-way or to stop his vehicle in obedience to such blue light.

(c) Nothing in this section shall prohibit any person from detaining another as provided by G.S. 15A-404 or assisting a law-enforcement officer as provided by G.S. 15A-405.

~~(d) Violation of subsection (a) of this section is a Class 1 misdemeanor. Violation of subsection (b) of this section is a Class 1 misdemeanor. Upon conviction under subsection (b), the term of imprisonment may be suspended on condition that the defendant:~~

- ~~(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or~~
- ~~(2) Perform community service for a term of 72 hours;~~
- ~~(3) Pay a fine in the discretion of the court; or~~
- ~~(4) Any combination of these conditions.~~

~~The judge may, in his discretion, impose any other lawful condition of probation.~~

(d1) Violations under this section are punishable as follows:

- (1) A violation of subdivision (a)(1), (2), or (3) is a Class 1 misdemeanor.
- (2) A violation of subdivision (b)(1), (2), (3), or (4) is a Class 1 misdemeanor. Notwithstanding the disposition in G.S. 15A-1340.23, the court may impose an intermediate punishment on a person sentenced under this subdivision.
- (3) A violation of subdivision (a)(4) is a Class I felony.
- (4) A violation of subdivision (b)(5) is a Class H felony.

(e) It shall be unlawful for any person other than duly authorized employees of a county, a municipality or the State of North Carolina, including but not limited to, the Department of Social Services, Health, Area

Mental Health, Developmental Disabilities, and Substance Abuse Authority or Building Inspector to represent to any person that they are duly authorized employees of a county, a municipality or the State of North Carolina or one of the above-enumerated departments and acting upon such representation to perform any act, make any investigation, seek access to otherwise confidential information, perform any duty of said office, gain access to any place not otherwise open to the public, or seek to be afforded any privilege which would otherwise not be afforded to such person except for such false representation or make any attempt to do any of said enumerated acts. Any person, corporation, or business association violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Sec. 2. This act becomes effective December 1, 1996, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 855

CHAPTER 713

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO DEVELOP VARIOUS MANAGED CARE ORGANIZATIONS AND MANAGED CARE PRODUCTS WITH PROVIDERS AND INSURERS, TO AMEND THE PUBLIC RECORDS LAW, AND TO PROVIDE A HEALTH CARE PERSONNEL REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 131E of the General Statutes is amended by inserting a new section to read:

"§ 131E-7.1. Public hospitals' managed care development authorized.

A public hospital as defined in G.S. 159-39(a) may acquire an ownership interest, in whole or in part, in a nonprofit or for-profit managed care company, including a health maintenance organization, physician hospital organization, physician organization, management services organization, or preferred provider organization with which the public hospital is also directly or indirectly a contracting provider. Ownership interest may be evidenced by the ownership or acquired by the purchase of stock. This ownership or acquisition of stock is the exercise of a health care function and is not the investment of idle funds within the meaning of G.S. 159-30 and G.S.159-39(g)."

Sec. 2. Part F of Article 5 of Chapter 131E of the General Statutes is amended by adding the following new section:

"§ 131E-99. Confidentiality of health care contracts.

The financial terms or other competitive health care information in a contract related to the provision of health care between a hospital and a managed care organization, insurance company, employer, or other payer is confidential and not a public record under Chapter 132 of the General Statutes."

Sec. 3. (a) G.S. 131E-111 is recodified as G.S. 131E-255.

(b) Chapter 131E of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Health Care Personnel Registry.

~~"§ 131E-111. § 131E-255. Nurse Aide Registry.~~

(a) Pursuant to 42 U.S.C. § 1395i-3(e) and 42 U.S.C. § 1396r(e), the Department shall establish and maintain a registry containing the names of all nurse aides working in nursing facilities in North Carolina. The Department shall include in the nurse aide registry any findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide.

(b) A nurse aide who wishes to contest a finding of resident neglect, resident abuse, or misappropriation of resident property made against the aide, is entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days ~~after the nurse aide receives~~ of the mailing of the written notice by certified mail of the Department's intent to place findings against the aide in the nurse aide registry.

(c) 'Nursing facility', as used in this section, means a 'combination home' as defined in G.S. 131E-101(1) and a 'nursing home' as defined in G.S. 131E-101(6) and also means 'facility' as that term is defined in G.S. 131E-116(2).

(d) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section.

(e) No person shall be liable for providing any information for the nurse aide registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the nurse aide registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

"§ 131E-256. Health Care Personnel Registry.

(a) The Department shall establish and maintain a health care personnel registry containing the names of all health care personnel working in health care facilities in North Carolina who have:

(1) Been subject to findings by the Department of:

- a. Neglect or abuse of a resident in a health care facility or a person to whom home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.
- b. Misappropriation of the property of a resident in a health care facility, as defined in subsection (b) of this section including places where home care services as defined by G.S. 131E-136 or hospice services as defined by G.S. 131E-201 are being provided.
- c. Misappropriation of the property of a health care facility.

- d. Diversion of drugs belonging to a health care facility or to a patient or client.
- e. Fraud against a health care facility or against a patient or client for whom the employee is providing services.
- (2) Been accused of any of the acts listed in subdivision (1) of this subsection, but only after the Department has screened the allegation and determined that an investigation is required.

The health care personnel registry shall also contain all findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

(b) For the purpose of this section, the following are considered to be 'health care facilities':

- (1) Adult Care Homes as defined in G.S. 131D-2.
- (2) Hospitals as defined in G.S. 131E-76.
- (3) Home Care Agencies as defined in G.S. 131E-136.
- (4) Nursing Pools as defined by G.S. 131E-154.2.
- (5) Hospices as defined by G.S. 131E-201.
- (6) Nursing Facilities as defined by G.S. 131E-255.

(c) For the purpose of this section, the following are considered to be 'health care personnel':

- (1) In an adult care home, an adult care personal aide who is any person who either performs or directly supervises others who perform task functions in activities of daily living which are personal functions essential for the health and well-being of residents such as bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) A nurse aide.
- (3) An in-home aide or an in-home personal care aide who provides hands-on paraprofessional services.

(d) Health care personnel who wish to contest a finding under subdivision (a)(1) of this section or the placement of information under subdivision (a)(2) of this section are entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days of the mailing of the written notice by certified mail of the Department's intent to place information about the person in the health care personnel registry.

(e) The Department shall provide an employer or potential employer of any person listed on the health care personnel registry of the nature of the finding or allegation and the status of the investigation.

(f) No person shall be liable for providing any information for the health care personnel registry if the information is provided in good faith. Neither an employer, potential employer, nor the Department shall be liable for using any information from the health care personnel registry if the information is used in good faith for the purpose of screening prospective applicants for employment or reviewing the employment status of an employee.

(g) Upon investigation and documentation, health care facilities shall ensure that the Department is notified of all allegations against health care personnel which appear to a reasonable person to be related to any act listed in subdivision (a)(1) of this section, and shall promptly report to the Department any resulting disciplinary action, demotion, or termination of employment of health care personnel.

(h) The North Carolina Medical Care Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section."

(c) The North Carolina Medical Care Commission shall monitor the implementation of the Health Care Personnel Registry and shall report to the General Assembly in 1998 any amendments needed to implement the purposes of the Health Care Personnel Registry.

(d) Of the funds appropriated from the General Fund to the Department of Human Resources for fiscal year 1996-97 the sum of one hundred sixty thousand dollars (\$160,000) shall be used to implement this section.

Sec. 4. This act is effective upon ratification. Section 2 of this act shall not affect any litigation pending as of the effective date of Section 2. Section 2 of this act expires June 1, 1997.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 470

CHAPTER 714

AN ACT TO CREATE THE GOOD FUNDS SETTLEMENT ACT, AND
TO AMEND THE DEFINITIONS UNDER THE REGISTRATION
REQUIREMENTS ACT FOR CERTAIN MAKERS OF MORTGAGES
AND DEEDS OF TRUST ON RESIDENTIAL REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 45A.

"Good Funds Settlement Act.

"§ 45A-1. Short title.

This Chapter shall be known as the Good Funds Settlement Act.

"§ 45A-2. Applicability.

This Chapter applies only to real estate transactions involving a one- to four-family residential dwelling or a lot restricted to residential use.

"§ 45A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

- (1) 'Bank' means a financial institution, including but not limited to a national bank, state chartered bank, savings bank, or credit union that is insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government.
- (2) 'Borrower' means the maker of the promissory note evidencing the loan to be delivered at the closing.
- (3) 'Cashier's check' means a check that is drawn on a bank, is signed by an officer or employee of the bank on behalf of the

- bank as drawer, is a direct obligation of the bank, and is provided to a customer of the bank or acquired from the bank for remittance purposes.
- (4) 'Certified check' means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that (i) the signature of the drawer on the check is genuine and the bank has set aside funds that are equal to the amount of the check and will be used to pay the check or (ii) the bank will pay the check upon presentment.
 - (5) 'Closing' means the time agreed upon by the purchaser, seller, and lender (if applicable), when the execution and delivery of the documents necessary to consummate the transaction contemplated by the parties to the contract occurs, and includes a loan closing.
 - (6) 'Closing funds' means the gross or net proceeds of the real estate transaction, including any loan funds, to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the parties.
 - (7) 'Collected funds' means funds deposited and irrevocably credited to a settlement agent's account used to fund the disbursement of settlement proceeds which account is a trust account, escrow account, or an account held by a company or its subsidiary which is licensed and supervised by the North Carolina Commissioner of Banks.
 - (8) 'Disbursement of settlement proceeds' means the payment of all closing funds from the transaction by the settlement agent to the persons or entities entitled to that payment.
 - (9) 'Lender' means any person or entity engaged in making or originating loans secured by mortgages or deeds of trust on real estate.
 - (10) 'Loan closing' means the time agreed upon by the borrower and lender, as applicable, when the execution and delivery of loan documents by the borrower occurs.
 - (11) 'Loan documents' means the note evidencing the debt due to the lender, the deed of trust or mortgage to secure that debt to the lender, and any other documents required by the lender to be executed by the borrower as part of the loan closing transaction.
 - (12) 'Loan funds' means the gross or net proceeds of the loan to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the borrower and lender.
 - (13) 'Party' or 'parties' means the seller, purchaser, borrower, lender, and settlement agent, as applicable to the subject transaction.
 - (14) 'Settlement' means the time when the settlement agent has received the duly executed deed, deed of trust or mortgage, and other loan documents and funds required to carry out the terms of the contracts between the parties.
 - (15) 'Settlement agent' means the person or persons responsible for conducting the settlement and disbursement of the settlement proceeds, and includes any individual, corporation, partnership,

or other entity conducting the settlement and disbursement of the closing funds.

- (16) 'Teller's check' means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

"§ 45A-4. Duty of settlement agent.

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any deeds or loan documents required to be filed by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

- (1) A certified check;
- (2) A check issued by the State of North Carolina, the United States, or a political subdivision of the State of North Carolina or the United States;
- (3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;
- (4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;
- (5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;
- (6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;
- (7) A check drawn on the account of or issued by a lender which is approved by the United States Department of Housing and Urban Development as either a supervised or nonsupervised mortgagee as defined in 24 C.F.R. section 202.2.

"§ 45A-5. Duty of lender, purchaser, or seller.

The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in G.S. 45A-4(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or

other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter.

"§ 45A-6. Validity of loan documents.

Failure to comply with the provisions of this Chapter shall not govern the validity or enforceability of any document, including a deed or any loan document, executed and delivered at any settlement occurring after October 1, 1996.

"§ 45A-7. Penalty.

Any party violating this Chapter is liable to any other party suffering a loss due to that violation for that other party's actual damages plus reasonable attorneys' fees. In addition, any party violating this Chapter shall pay to the party or parties suffering a loss an amount equal to one thousand dollars (\$1,000) or double the amount of interest payable on any loan for the first 60 days after the loan closing, whichever amount is greater."

Sec. 2. G.S. 53-234(6) reads as rewritten:

"(6) 'Exempt person or organization' means:

- (a) Any supervised or any nonsupervised institution, as these terms are defined in 24 C.F.R. section 202.2, approved by the United States Department of Housing and Urban Development, or any lender authorized to engage in business as a bank, a farm credit system, life insurance company, savings institution, or credit union, or ~~HUD-approved mortgagee~~ under the laws of the United States or the State of North Carolina and subsidiaries and affiliates of such lenders, which subsidiaries and affiliates are subject to the general supervision or regulation of the lender or subject to audit or examination by a regulatory body or agency of the United States or the State of North Carolina; the entities listed in this sub-subdivision, and their officers and employees, are not subject to any of the provisions of this Article; or
- (b) Any licensed real estate agent or broker, who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives direct compensation or income in connection with the placement of a mortgage loan; or
- (c) Any person who, as seller, receives in one calendar year no more than ten mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation; or
- (d) The North Carolina Housing Finance Agency as established by Chapter 122A of the General Statutes and the North

Carolina Agricultural Finance Authority as established by Chapter 122D of the General Statutes; or

- (e) Any agency of the federal government or any state or municipal government granting first mortgage loans under specific authority of the laws of any state or the United States."

Sec. 3. This act becomes effective October 1, 1996, and applies to settlements occurring on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 833

CHAPTER 715

AN ACT TO REQUIRE THAT VEHICLES MAKING FREQUENT STOPS
ON HIGHWAYS BE EQUIPPED WITH FLASHING AMBER LIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-134 reads as rewritten:

"§ 20-134. *Lights on parked vehicles.*

(a) Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in G.S. 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of 500 feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of 200 feet upon such highway.

(b) A motor vehicle operated on a highway by a rural letter carrier or by a newspaper delivery person shall be equipped and operated with flashing amber lights at any time the vehicle is being used in the delivery of mail or newspapers, regardless of whether the vehicle is attended or unattended."

Sec. 2. This act becomes effective October 1, 1996, and applies to offenses occurring on or after that date."

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1139

CHAPTER 716

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT
LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO
IMPLEMENT THE STATE BOARD OF EDUCATION'S ABC'S PLAN
IN ORDER TO ESTABLISH AN ACCOUNTABILITY MODEL FOR
THE PUBLIC SCHOOLS TO IMPROVE STUDENT PERFORMANCE
AND INCREASE LOCAL FLEXIBILITY AND CONTROL, AND TO
MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

-----SCHOOL-BASED MANAGEMENT AND ACCOUNTABILITY PROGRAM

Section 1. G.S. 115C-12(9) reads as rewritten:

"(9) Miscellaneous Powers and Duties. -- All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

- a. To certify and regulate the grade and salary of teachers and other school employees.
- b. To adopt and supply textbooks.
- c. To adopt rules requiring all local boards of education to implement the Basic Education Program on an incremental basis within funds appropriated for that purpose by the General Assembly and by units of local government. Beginning with the 1991-92 school year, the rules shall require each local school administrative unit to implement fully the standard course of study in every school in the State in accordance with the Basic Education Program so that every student in the State shall have equal access to the curriculum as provided in the Basic Education Program and the standard course of study.

The Board shall establish benchmarks by which to measure the progress that each local board of education has made in implementing the Basic Education Program. The Board shall report to the Joint Legislative Education Oversight Committee and to the General Assembly by December 31, 1991, and by February 1 of each subsequent year on each local board's progress in implementing the Basic Education Program, including the use of State and local funds for the Basic Education Program.

The Board shall develop a State accreditation program that meets or exceeds the standards and requirements of the Basic Education Program. The Board shall require each local school administrative unit to comply with the State accreditation program to the extent that funds have been made available to the local school administrative unit for implementation of the Basic Education Program.

The Board shall use the State accreditation program to monitor the implementation of the Basic Education Program.

- cl. To issue an annual 'report card' for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account ~~demographic, economic, and other~~ factors that have been shown to affect student ~~performance.~~ performance and that

the State Board considers relevant to assess the State's efforts to improve student performance.

- ~~c2. To develop management accountability indicators to measure the efficiency and appropriate use of staff in each school and at the administrative office. Staff development for school administrators shall be a high priority of the Department of Public Instruction.~~
- c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board may consider for inclusion in the building reports the following criteria: test scores, the success of graduating students in postsecondary institutions, attendance, graduation and dropout rates, the numbers of children enrolled in free lunch or Chapter 1 programs, the education level of the parents of children enrolled in the school, the teaching experience of the school staff, and whether the building has been successful in meeting the goals of the building and systemwide plans developed in accordance with G.S. 115C-238.1 through G.S. 115C-238.6. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1995, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.
- c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.
- d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
- e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters."

Sec. 2. Part 4 of Article 16 of Chapter 115C of the General Statutes, G.S. 115C-238.1 through G.S. 115C-238.8, is recodified as Article 8B of Chapter 115C of the General Statutes, G.S. 115C-105.20 through G.S. 115C-105.27.

Sec. 3. Article 8B of Chapter 115C of the General Statutes, as recodified by Section 2 of this act, reads as rewritten:

"ARTICLE 8B. —

~~"Performance-based School-Based Management and Accountability Program.~~~~"Part 1. Implementation of Program.~~~~"§ 115C-105.20. Performance-based School-Based Management and Accountability Program; development and implementation by State Board Program.~~

~~(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop and implement a Performance-based Accountability Program, a School-Based Management and Accountability Program. The primary goal of the Program shall be to improve student performance. The State Board of Education, after consultation with the Task Force on Site-Based Management, shall adopt:~~

- ~~(1) Procedures and guidelines through which local school administrative units may participate in the program; and~~
- ~~(2) Guidelines for developing local school improvement plans with three-year school and student performance goals and strategies to achieve the standards adopted by the State Board. The guidelines shall require each participating local school administrative unit to submit plans for each school in the unit for achieving those goals. The guidelines shall also require each local school administrative unit to report on an annual basis on progress made in achieving those goals at each school in the unit.~~

~~The school performance goals may, in the discretion of the State Board, but are not required to include factors such as community involvement, parent involvement, professional development of teachers, and the school climate with regard to the safety of students and employees and the use of positive discipline.~~

~~(3), (4) Repealed by Session Laws 1995, c. 272, s. 1.~~

~~(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to:~~

- ~~(1) Assist local boards and schools in the development and implementation of school-based management under Part 2 of this Article.~~
- ~~(2) Recognize the schools that meet or exceed their goals.~~
- ~~(3) Identify low-performing schools under G.S. 115C-105.30, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.30. The assistance teams should consist of currently practicing teachers and staff, representatives of institutions of higher education, school administrators, and others the State Board considers appropriate.~~
- ~~(4) Enable assistance teams to make appropriate recommendations under G.S. 115C-105.31.~~
- ~~(5) Establish a process to resolve disputes between local boards and schools in the development and implementation of school~~

improvement plans under G.S. 115C-105.22(b1). This process shall provide for final resolution of the disputes.

~~"§ 115C-105.21. Local participation in the Program voluntary; the benefits of local participation. Program.~~

~~(a) Local school administrative units may, but are not required to, participate in the Performance-based shall participate in the School-Based Management and Accountability Program.~~

~~(b) Local school administrative units that participate in the Performance-based Accountability Program:~~

- ~~(1) Are exempt from State requirements to submit reports and plans, other than local school improvement plans, to the State Board of Education and the Department of Public Instruction. They are not exempt from federal requirements to submit reports and plans to the Department.~~
- ~~(2) Are subject to the performance standards but not the opportunity standards or the staffing ratios of the State Accreditation Program.~~
- ~~(3) Repealed by Session Laws 1995, c. 272, s. 2.~~
- ~~(4) May be allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-238.6.~~
- ~~(5) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-238.6(a).~~
- ~~(5a) May use State funds allocated for teacher assistants to reduce class size or the student-teacher ratio in kindergarten through third grade, in accordance with a local school improvement plan so long as the affected teacher assistant positions are not filled when the plan is amended or adopted by the building-level staff entitled to vote on the building-level plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.~~
- ~~(5b) In accordance with a local school improvement plan, may use (i) funds from the funding allotment for Classroom Materials/Instructional Supplies/Equipment for the purchase of textbooks, (ii) funds from the funding allotment for Textbooks for the purchase of instructional supplies, instructional equipment, or other classroom materials, and (iii) funds from the allotment for Noninstructional Support Personnel for teacher positions to reduce class size in kindergarten through third grade.~~
- ~~(6) Shall continue to use the Teacher Performance Appraisal Instrument (TPAI) for evaluating beginning teachers during the first three years of their employment; they may, however, develop other evaluation approaches for teachers who have attained career status.~~

~~The Department of Public Instruction shall provide technical assistance, including the provision of model evaluation processes and instruments, to local school administrative units that elect to develop dual personnel evaluation processes. A dual personnel evaluation process includes (i) an evaluation designed to provide information to guide teachers in their professional growth and development, and (ii) an evaluation to provide information to make personnel decisions pertaining to hiring, termination, promotion, and reassignment.~~

(b1) The School-Based Management and Accountability Program shall provide increased local control of schools with the goal of improving student performance. Local boards of education:

- (1) Are allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-105.21A; and
- (2) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-105.21B.

(c) The School-Based Management and Accountability Program shall be based upon an accountability, recognition, assistance, and intervention process in order to hold each school and the school's personnel accountable for improved student performance in the school.

"Part 2. School-Based Management.

"§ 115C-105.21A. Budget flexibility.

(a) Consistent with improving student performance, a local board shall provide maximum flexibility to schools in the use of funds to enable the schools to accomplish their goals.

(b) Subject to the following limitations, local boards of education may transfer and may approve transfers of funds between funding allotment categories:

- (1) In accordance with a school improvement plan accepted under G.S. 115C-105.22, State funds allocated for teacher assistants may be transferred only for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school. Funds allocated for teacher assistants may be transferred to reduce class size or to reduce the student-teacher ratio in kindergarten through third grade so long as the affected teacher assistant positions are not filled when the plan is amended or approved by the building-level staff entitled to vote on the plan or the affected teacher assistant positions are not expected to be filled on the date the plan is to be implemented. Any State funds appropriated for teacher assistants that were converted to certificated teachers before July 1, 1995, in accordance with Section 1 of Chapter 986 of the 1991 Session Laws, as rewritten by Chapter 103 of the 1993 Session Laws, may continue to be used for certificated teachers.

- (2) In accordance with a school improvement plan accepted under G.S. 115C-105.22, (i) State funds allocated for classroom materials/instructional supplies/equipment may be transferred only for the purchase of textbooks; (ii) State funds allocated for textbooks may be transferred only for the purchase of instructional supplies, instructional equipment, or other classroom materials; and (iii) State funds allocated for noninstructional support personnel may be transferred only for teacher positions.
- (3) No funds shall be transferred into the central office allotment category.
- (4) Funds allocated for exceptional children and funds allocated for driver's education shall not be transferred.
- (5) Funds allocated for classroom teachers may be transferred only for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the textbooks allotment category and the classroom materials/instructional supplies/equipment allotment category.
- (6) Funds allocated for vocational education may be transferred only in accordance with any rules that the State Board of Education considers appropriate to ensure compliance with federal regulations.
- (7) Funds allocated for career development shall be used in accordance with Section 17.3 of Chapter 324 of the 1995 Session Laws.

"§ 115C-105.21B. Waivers of State laws, rules, or policies.

(a) When included as part of a school improvement plan accepted under G.S. 115C-105.22, local boards of education shall submit requests for waivers of State laws, rules, or policies to the State Board of Education. A request for a waiver shall (i) identify the school making the request, (ii) identify the State laws, rules, or policies that inhibit the school's ability to improve student performance, (iii) set out with specificity the circumstances under which the waiver may be used, and (iv) explain how the requested waiver will permit the school to improve student performance. Except as provided in subsection (c) of this section, the State Board shall grant waivers only for the specific schools for which they are requested and shall be used only under the specific circumstances for which they are requested.

(b) When requested as part of a school improvement plan, the State Board of Education may grant waivers of:

- (1) State laws pertaining to class size, teacher certification, and the duty-free period for classroom teachers under G.S. 115C-301.1; and
- (2) State rules and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-287.1 and G.S. 115C-325, health and safety codes, compulsory attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.

(c) The State Board also may grant requests received from local boards for waivers of State laws, rules, or policies that affect the organization, duties, and assignment of central office staff only. However, none of the duties to be performed under G.S. 115C-436 may be waived.

(d) Notwithstanding subsections (b) and (c) of this section, the State Board shall not grant waivers of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board.

(e) Notwithstanding subsection (b) of this section, the State Board may grant requests received from local boards for waivers of State laws, rules, or policies pertaining to the placement of principals on the State salary schedule for public school administrators in order to provide financial incentives to encourage principals to accept employment in a school that has been identified as low-performing under G.S. 115C-105.30. The State Board shall act on requests under this subsection at the first Board meeting following receipt of each request.

(f) Except as provided in subsection (e) of this section, the State Board shall act within 60 days of receipt of all requests for waivers under this section.

(g) The State Board shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or modified or whether the Board should recommend to the General Assembly the repeal or modification of any laws.

"§ 115C-105.22. Development of local plans; elements of local and approval of school improvement plans.

(a) Development of systemwide plan by the local board of education. -- The board of education of a local school administrative unit that elects to participate in the Program shall develop and submit a local school improvement plan for the entire local school administrative unit to the State Superintendent of Public Instruction before April 15 of the fiscal year preceding the fiscal year in which participation is sought.

A systemwide improvement plan shall remain in effect for no more than three years.

(b) Establishment of school and student performance goals and a systemwide staff development plan by the local board of education for the systemwide plan. -- The local board of education shall establish school and student performance goals and a systemwide staff development plan for the local school administrative unit for inclusion in the systemwide plan.

(1) School and student performance goals. -- The performance goals for the local school administrative unit shall address specific, measurable goals for all standards adopted by the State Board. Factors that determine gains in achievement vary from school to school; therefore, socioeconomic factors and previous progress toward school and student performance goals shall be used as the basis of the local school improvement plan.

(2) Systemwide staff development plan. -- The systemwide staff development plan shall be consistent with the systemwide goals and shall include a component to accommodate the staff development needs at the building level as expressed in each building's

improvement plan. In designing this component of the systemwide staff development plan, direct allocation of a needed portion of the staff development funds to the building level shall be given first priority. Each school building shall have the flexibility to combine its staff development allocation with other schools in the local school administrative unit when the staff development needs of those schools are substantially similar as expressed in their approved building-level plans.

- (3) Advisory panel. -- The local board of education shall actively involve an advisory panel composed of a substantial number of teachers, school administrators, other school staff, and parents of children enrolled in the local school administrative unit, in developing and achieving the student and school performance goals for the local school improvement plan. Parents serving on an advisory panel shall not be employees of the school unit and shall reflect the racial and socioeconomic composition of the students enrolled in the local school administrative unit. The advisory panel shall ensure substantial parent participation. It is the intent of the General Assembly that teachers have a major role in developing the school and student performance goals for the local school improvement plan; therefore, at least half of the members participating in this advisory panel shall be teachers. Every teacher in the local school administrative unit shall have an opportunity to elect by secret ballot the teachers who are involved in the advisory panel.

(b1) Development by each school of strategies for attaining local school and student performance goals. -- In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.28. The principal of each school, representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a building-level plan to address school and student performance goals appropriate to that school from those established by the local board of education. school improvement plan to improve student performance. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student outcomes; achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school and student performance goals at the building level. improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for attaining local school and improving student performance goals shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the building-level school improvement plan. The strategies may include a

~~decision to use State funds allocated for teacher assistants to reduce class size or the student-teacher ratio in kindergarten through the third grade in accordance with G.S. 115C-238.2(b)(5a) or to use State funds in accordance with G.S. 115C-238.2(b)(5b), G.S. 115C-105.21A. The strategies may also include requests for waivers of State laws, regulations, rules, or policies for that school. A request for a waiver shall (i) identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals, (ii) set out with specificity the circumstances under which the waiver may be used, and (iii) explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals, meet the requirements of G.S. 115C-105.21B.~~

Support among affected staff members is essential to successful implementation of a building-level plan to address school and student performance goals appropriate to a school; therefore, the school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed building-level school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal may shall submit the building-level school improvement plan to the local board of education for inclusion in the systemwide plan only if the proposed building-level school improvement plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the building-level school improvement plan. The local board shall not make any substantive changes in any building-level school improvement plan that it accepts; the local board shall set out any building-level plan that it accepts in the systemwide plan. accepts. If the local board rejects a building-level school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for a vote, and submit it to the local board for inclusion in the systemwide plan. to accept or reject. If no building-level school improvement plan is accepted for a school before March 15 of the fiscal year preceding the fiscal year in which participation is sought, within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school for inclusion in the systemwide plan; the school. The General Assembly urges the local board to utilize the school's proposed building-level school improvement plan to the maximum extent possible when developing such a plan.

A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school

improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans.

~~(b2) Waivers concerning central office staff. -- A local board of education may request waivers of State laws, regulations, or policies which are included in the building plans described in subsection (b1) of this section, and it may also request waivers which affect the organization, duties, and assignment of central office staff only. Provided, none of the duties to be performed pursuant to G.S. 115C-436 may be waived. A request for a waiver shall (i) identify the State laws, regulations, or policies that inhibit the local unit's ability to reach its local accountability goals, (ii) set out with specificity the circumstances under which the waiver may be used, and (iii) explain how a waiver of those laws, regulations, or policies will permit the local unit to reach its local goals.~~

~~(c) Repealed by Session Laws 1995, c. 272, s. 3.~~

~~(d) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 75.1(b).~~

~~"§ 115C-105.23. Differentiated pay.~~

~~(a) Local school administrative units may include, but are not required to include as a part of their local school improvement plans, a systemwide differentiated pay plan for all of the staff assigned to school buildings and all classes of staff assigned to the central office that the local boards determine are participants in the development or implementation of the local school improvement plans. Units electing to include differentiated pay plans in their school improvement plans shall base their differentiated pay plans on:~~

- ~~(1) A career development pilot program;~~
- ~~(2) A lead teacher pilot program;~~
- ~~(3) A locally designed school-based performance program, subject to limitations and guidelines adopted by the State Board of Education;~~
- ~~(4) A differentiated pay plan that the State Board of Education finds has been successfully implemented in another state; or~~
- ~~(5) A locally designed plan including any combination or modification of the foregoing plans.~~

~~A differentiated pay plan may also authorize the use of State differentiated pay funds for staff development and planning activities and for paying substitute teachers as is necessary to provide time for staff development and planning activities.~~

~~(a1) All State differentiated pay funds shall become available for expenditure July 1 of each fiscal year. These funds shall remain available for expenditure for:~~

- ~~(1) Bonuses and supplements to implement local differentiated pay plans until November 30 of the subsequent fiscal year; and~~
- ~~(2) Staff development to implement local differentiated pay plans until August 31 of the subsequent fiscal year: Provided, however, if funds allocated for bonuses and supplements under a local differentiated pay plan are not spent for that purpose because of a failure to meet local goals, these funds shall remain available until~~

~~November 30 of the subsequent fiscal year to provide for staff development in accordance with that local plan.~~

~~(b) Differentiated pay plans shall be developed and voted on in accordance with G.S. 115C-238.3(c).~~

~~Any differentiated pay plan developed in accordance with this section shall be implemented within State, local and any other funds available for differentiated pay. State funds shall be used to implement a differentiated pay plan for employees who derive salary from State funds. State funds may be combined with any other differentiated pay funds at the building level to implement a differentiated pay plan which includes employees who derive salary from any other salary source so long as differentiated pay funds per employee are appropriated from the other salary source in an amount equal to the dollar amount appropriated by the State per State employee for differentiated pay. An employee who derives salary from only one salary source shall be paid differentiated pay monies from that source only; if an employee derives salary from more than one salary source, differentiated pay monies paid to that employee shall be paid proportionally based on the pro rata share of each salary source. Provided, however, a local board of education may provide additional local funds for differentiated pay for any of its employees without regard to the employee's salary source.~~

~~(c), (d) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 75.1(c).~~

~~(e) Any additional compensation received by an employee as a result of the unit's participation in the Program shall be paid as a bonus or supplement to the employee's regular salary. If an employee in a participating unit does not receive additional compensation, such failure to receive additional compensation shall not be construed as a demotion, as that term is used in G.S. 115C-325.~~

~~Payments of bonuses or supplements shall be made no more frequently than once every calendar quarter; Provided, however, payments in the career development pilot units may be made on a monthly basis.~~

~~(f) If a local school administrative unit bases its differentiated pay plan on a locally designed school-based performance program, pursuant to subdivision (a)(3) of this section, the plan shall provide that following the attainment of the local school goals, the local board of education shall make a determination of which staff members contributed to the attainment of those goals. Differentiated pay bonuses shall then be distributed to those designated employees. The local board of education shall make the determination upon recommendation of (i) the superintendent and (ii) any other person or committee designated in the local differentiated pay plan. The other person or committee designated in the local differentiated pay plan may be the principal, a school-based committee, or any other person or local committee.~~

~~"§ 115C-105.24. Approval of local school administrative unit plans by the State Superintendent; conditions for continued participation.~~

~~(a) Prior to June 30 each year, the State Superintendent shall review local school improvement plans submitted by the local school administrative units in accordance with policies and standards adopted by the State Board of Education and shall recommend to the State Board of Education whether the~~

~~plan should be approved. If the State Board of Education approves the plan for a local school administrative unit, that unit shall participate in the Program for the next fiscal year.~~

~~If a local plan contains a request for a waiver of State laws, regulations, or policies, in accordance with G.S. 115C-238.3(b1) or (b2), the State Superintendent shall consider and recommend to the State Board whether and to what extent the identified laws, regulations, or policies should be waived. If the State Board of Education deems it necessary to do so to enable a local unit to reach its local accountability goals, the State Board may grant waivers of:~~

- ~~(1) State laws pertaining to class size, teacher certification, the use of State-adopted textbooks, and the purposes for which State funds for the public schools may be used;~~
- ~~(2) All State regulations and policies, except those pertaining to public school State salary schedules and employee benefits for school employees, the instructional program that must be offered under the Basic Education Program, the system of employment for public school teachers and administrators set out in G.S. 115C-325, health and safety codes, compulsory school attendance, the minimum lengths of the school day and year, and the Uniform Education Reporting System.~~

~~The State Board shall act promptly on requests for waivers under this section.~~

~~(a1) Notwithstanding subsection (a) of this section, the following limitations apply to the granting of waivers:~~

- ~~(1) The provisions of G.S. 115C-12(16)b. regarding the placement of State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board shall not be waived.~~
- ~~(2) Except for waivers requested by the local board in accordance with G.S. 115C-238.3(b2) for central office staff, waivers shall be granted only for the specific schools for which they are requested in building-level plans and shall be used only under the specific circumstances for which they are requested.~~
- ~~(3) The State Board shall not permit funds under any funding allotment category other than Central Office Administration to be used for central office administrators.~~
- ~~(4) The State Board shall not permit funds under the Classroom Teachers allotment category to be used for any additional purpose other than for teachers of exceptional children, for teachers of at-risk students, and for authorized purposes under the Textbooks allotment category and the Classroom Materials/Instructional Supplies/Equipment allotment category.~~
- ~~(5) The State Board shall not grant waivers to permit funds under the Teacher Assistant allotment category to be used for any purpose other than for personnel (i) to serve students only in kindergarten through third grade, or (ii) to serve students primarily in kindergarten through third grade when the personnel are assigned to an elementary school to serve the whole school.~~

~~(a2) The State Board of Education shall, on a regular basis, review all waivers it has granted to determine whether any rules should be repealed or whether it should recommend to the General Assembly the repeal of any laws.~~

~~(a3) Local boards of education shall provide maximum flexibility in the use of funds to individual schools to enable them to accomplish their individual schools' goals.~~

~~(b) Local school administrative units shall continue to participate in the Program so long as (i) they demonstrate satisfactory progress toward school and student performance goals set out in their local school improvement plans; or (ii) once their local goals are met, they continue to achieve their local goals and they otherwise demonstrate satisfactory performance, as determined by the State Superintendent in accordance with guidelines set by the State Board of Education.~~

"§ 115C-105.25. Distribution of staff development funds.

Any funds the local board of education makes available to an individual school building to implement the local school improvement plan at that school shall be used in accordance with the building-level plan set out in the systemwide plan, that plan.

Each local board shall distribute seventy-five percent (75%) of the funds in the staff development funding allotment to the schools to be used in accordance with that school's school improvement plan. By October 1 of each year, the principal shall disclose to all affected personnel the total allocation of all funds available to the school for staff development and the superintendent shall disclose to all affected personnel the total allocation of all funds available at the system level for staff development. At the end of the fiscal year, the principal shall make available to all affected personnel a report of all disbursements from the building-level staff development funds, and the superintendent shall make available to all affected personnel a report of all disbursements at the system level of staff development funds.

"§ 115C-105.26. Creation of the Task Force on Site-Based School-Based Management.

(a) There is created the Task Force on Site-Based School-Based Management under the State Board of Education.

The Task Force shall be composed of 20 members appointed as follows:

- (1) The Superintendent of Public Instruction;
- (2) One member of the State Board of Education Education, one parent of a public school child, and two at-large members appointed by the State Board of Education;
- (3) Two members of the Senate appointed by the President Pro Tempore of the Senate;
- (4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;
- (6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving

- recommendations from The North Carolina State School Boards Association, Inc.;
- (7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;
 - (8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;
 - (9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
 - (10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
 - (11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
 - (12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
 - (13) Repealed by Session Laws 1995, c. 324, s. 17.
 - ~~(14) One parent of a public school child appointed by the Superintendent of Public Instruction;~~
 - ~~(15) Two at-large members appointed by the Superintendent of Public Instruction;~~
 - (16) One representative of business and industry appointed by the Governor;
 - (17) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina; and
 - (18) One county commissioner appointed by the ~~Superintendent of Public Instruction~~ State Board of Education after receiving recommendations from the North Carolina Association of County Commissioners.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The Task Force on ~~Site-Based~~ School-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:

- (1) Advise the State Board of Education on the ~~implementation of the School Improvement and Accountability Act of 1989, as amended, especially the development and implementation of building-level plans;~~ development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program;
- (2) Advise the State Board of Education on how to ~~provide training and assistance to assist the public schools so as to facilitate the implementation of site-based school-based management;~~
- (3) ~~Review~~ Advise the State Board of Education about publications to be produced by the Department of Public Instruction on the development and implementation of ~~building-level school improvement plans;~~
- (4) Report annually to the State Board of Education on the implementation of ~~site-based~~ school-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve ~~site-based~~ school-based management.

(c) The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The State Board of Education shall appoint a Director of the Task Force on Site-Based School-Based Management.

"§ 115C-105.27. *Parent involvement programs and conflict resolution programs as part of* ~~building-level school improvement plans.~~

~~Beginning with the 1994-95 school year, a~~ A school is encouraged to include a comprehensive parent involvement program as part of its ~~building-level school improvement plan~~ under G.S. ~~115C-238.3, 115C-105.22.~~ The State Board of Education shall develop a list of recommended strategies that it determines to be effective, which building level committees may use to establish parent involvement programs designed to meet the specific needs of their schools. The Board shall make the list available to local school administrative units and school buildings by the beginning of the 1994-95 school year.

~~Beginning with the 1994-95 school year, a~~ A school is encouraged to review its need for a comprehensive conflict resolution program as part of the development of its ~~building-level school improvement plan~~ under G.S. ~~115C-238.3, 115C-105.22.~~ If a school determines that this program is needed, it may select from the list developed by the State Board of Education under G.S. 115C-81(a4) or may develop its own materials and curricula to be approved by the local board of education.

"Part 3. School-Based Accountability.

"§ 115C-105.28. Annual performance goals.

The School-Based Management and Accountability Program shall (i) focus on student performance in the basics of reading, mathematics, and

communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each school in the State in order to measure the growth in performance of the students in each individual school.

"§ 115C-105.29. Performance recognition.

(a) The personnel in schools that achieve a level of expected growth greater than one hundred percent (100%) at a level to be determined by the State Board of Education are eligible for financial awards in amounts set by the State Board. Schools and personnel shall not be required to apply for these awards. For the purpose of this section, 'personnel' includes the principal, assistant principal, instructional personnel, instructional support personnel, and teacher assistants assigned to that school.

(b) The State Board shall establish a procedure to allocate the funds for these awards to the local school administrative units in which the eligible schools are located. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for:

(1) Awards to the personnel; or

(2) The purposes authorized in a plan that has been:

a. Developed and voted on by the personnel in the same manner that a school improvement plan is approved under G.S. 115C-105.22(b1);

b. Approved by a majority of the personnel who vote on the plan; and

c. Submitted to and approved by the local board of education.

The local board shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.

"§ 115C-105.30. Identification of low-performing schools.

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(b) Each identified low-performing school shall notify the parents of students attending that school that the State Board of Education has found that the school has failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in that school are performing below grade level. This notification also shall include a description of the steps the school is taking to improve student performance.

"§ 115C-105.31. Assistance teams; review by State Board.

(a) The State Board of Education may assign an assistance team to any school identified as low-performing under this Article or to any other school that requests an assistance team and that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-

performing schools in which the educational performance of the students is declining. The Department of Public Instruction shall, with the approval of the State Board, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

- (1) Review and investigate all facets of school operations and assist in developing recommendations for improving student performance at that school.
- (2) Evaluate at least semiannually the personnel assigned to the school and make findings and recommendations concerning their performance.
- (3) Collaborate with school staff, central offices, and local boards of education in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.
- (4) Make recommendations as the school develops and implements this plan.
- (5) Review the school's progress.
- (6) Report, as appropriate, to the local board of education, the community, and the State Board on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 115C-105.22 is impeding student performance at a school, the team may recommend to the local board that it vacate the relevant portions of that plan and direct the school to revise those portions.

(c) If a school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continues or that the State Board take further action under G.S. 115C-105.32.

(d) The State Board shall annually review the progress made in identified low-performing schools.

"§ 115C-105.32. Dismissal or removal of personnel; appointment of interim superintendent.

(a) Upon the identification of a school as low-performing under this Part, the State Board shall proceed under G.S. 115C-325(q)(1) for the dismissal of the principal assigned to that school.

(b) The State Board shall proceed under G.S. 115C-325(q)(2) for the dismissal of teachers, assistant principals, directors, and supervisors assigned to a school identified as low-performing in accordance with G.S. 115C-325(q)(2).

(c) The State Board may appoint an interim superintendent in a local school administrative unit:

- (1) Upon the identification of more than half the schools in that unit as low-performing under G.S. 115C-105.30; or
- (2) Upon the recommendation from an assistance team assigned to a school located in that unit that has been identified as low-performing under G.S. 115C-105.30. This recommendation shall be based upon a finding that the superintendent has failed to

cooperate with the assistance team or has otherwise hindered that school's ability to improve.

The State Board may assign any of the powers and duties of the local superintendent and the local finance officer to the interim superintendent that the Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The interim superintendent shall perform all of these assigned powers and duties. The State Board of Education may terminate the contract of any local superintendent entered into on or after July 1, 1996, when it appoints an interim superintendent. The Administrative Procedure Act shall apply to that decision. Neither party to that contract is entitled to damages.

(d) In the event the State Board has appointed an interim superintendent and the State Board determines that the local board of education has failed to cooperate with the interim superintendent or has otherwise hindered the ability to improve student performance in that local school administrative unit or in a school in that unit, the State Board may suspend any of the powers and duties of the local board of education that the State Board considers are necessary or appropriate to improve student performance in the local school administrative unit. The State Board shall perform all of these assigned powers and duties for a period of time to be specified by the State Board.

(e) If the State Board suspends any of the powers and duties of the local board of education under subsection (d) of this section and subsequently determines it is necessary to change the governance of the local school administrative unit in order to improve student performance, the State Board may recommend this change to the General Assembly, which shall consider, at its next session, the future governance of the identified local school administrative unit."

Sec. 4. Article 6A of Chapter 115C of the General Statutes is repealed.

Sec. 5. G.S. 115C-39 reads as rewritten:

"§ 115C-39. Removal of board ~~members~~ members; suspension of duties by State Board.

(a) In case the Superintendent of Public Instruction shall have State Board of Education has sufficient evidence that any member of a local board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, ~~he~~ the State Board of Education shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education.

(b) In the event the State Board of Education has appointed an interim superintendent under G.S. 115C-105.32 and the State Board determines that the local board of education has failed to cooperate with the interim

superintendent, the State Board shall have the authority to suspend any of the powers and duties of the local board and to act on its behalf under G.S. 115C-105.32."

Sec. 6. G.S. 115C-274 reads as rewritten:

"§ 115C-274. ~~Removal for cause.~~ Removal.

(a) Local boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the ~~Superintendent of Public Instruction shall have~~ State Board of Education has sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, ~~he the~~ the State Board of Education shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of ~~said~~ that board of education to hear the evidence in ~~such~~ the case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor: Provided, that such superintendent shall have the right to try his title to office in the courts of the State.

(b) If the superintendent shall fail in the duties enumerated in ~~G.S. 115C-276(g) through (i) or such~~ G.S. 115C-276(g), 115C-276(h), 115C-276(i), or any other duties as may be assigned him, he shall be subject, after notice, to an investigation by the Superintendent of Public Instruction State Board of Education or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the Superintendent of Public Instruction, or he the State Board of Education may revoke the superintendent's certificate and the superintendent may be dismissed by his board of education.

(c) The identification by the State Board of Education of more than half the schools in a local school administrative unit as low-performing under G.S. 115C-105.30 is evidence that the superintendent is unable to fulfill the duties of the office, and the State Board may appoint an interim superintendent to carry out the duties of the superintendent under G.S. 115C-105.32, may revoke the superintendent's certificate under this section, may dismiss the superintendent under G.S. 115C-105.32, or may take any combination of these actions."

Sec. 7. G.S. 115C-296 is amended by adding a new subsection to read:

"(d) The State Board of Education may revoke or refuse to renew a teacher's certificate when:

- (1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.30; and
- (2) The assistance team assigned to that school under G.S. 115C-105.31 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation."

-----STUDENT PERFORMANCE

Sec. 7.1. G.S. 115C-288(a) is rewritten to read:

"§ 115C-288. Powers and duties of principal.

(a) To Grade and Classify Pupils. -- The principal shall have authority to grade and classify ~~pupils~~, pupils except a principal shall not require additional testing of a student entering a public school from a school governed under Article 39 of this Chapter if test scores from a nationally standardized test or nationally standardized equivalent measure that are adequate to determine the appropriate placement of the child are available."

Sec. 8. G.S. 115C-325 is amended by adding a new subsection to read:

"(g) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Schools.

(1) Notwithstanding any other provision of this section or any other law, the State Board:

a. Shall suspend with pay a principal who has been assigned to a school for more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter; and

b. May suspend with pay a principal who has been assigned to a school for no more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter.

These principals shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed. The panel shall order the dismissal of the principal, at which time the period of suspension with pay shall expire, unless the panel makes a public determination that the principal has established that the factors that led to the identification of the school as low-performing were not due to the inadequate performance of the principal. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subsection. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of teachers, assistant principals, directors, and supervisors assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a teacher, assistant principal, director, or supervisor when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The State Board may dismiss a teacher, assistant principal, director, or supervisor when:

- a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.31; and
- b. That assistance team makes the recommendation to dismiss the teacher, assistant principal, director, or supervisor for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career teacher.

A teacher, assistant principal, director, or supervisor may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

- (3) The State Board of Education or a local board may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent a local board from refusing to renew the contract of any person employed in a school identified as low-performing under G.S. 115C-105.30.
- (4) Neither party to a school administrator contract is entitled to damages under this subsection.
- (5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection."

Section 8.1. The State Board of Education shall develop a comprehensive plan to improve reading achievement in the public schools. The plan shall be fully integrated with State Board plans to improve student performance and promote local flexibility and efficiency. The plan shall be based on reading instructional practices for which there is strong evidence of effectiveness in existing empirical scientific research studies on reading development. The plan shall be developed with the active involvement of teachers, college and university educators, parents of students, and other interested parties. The plan shall, if appropriate, include revision of the standard course of study, revision of teacher certification standards, and revision of teacher education program standards.

Sec. 8.2. The State Board of Education shall critically evaluate and revise the standard course of study so as to provide school units with guidance in the implementation of balanced, integrated, and effective programs of reading instruction. The General Assembly believes that the first, essential step in the complex process of learning to read is the accurate pronunciation of written words and that phonics, which is the knowledge of relationships of the symbols of the written language and the sounds of the spoken language, is the most reliable approach to arriving at the accurate pronunciation of a printed word. Therefore, these programs shall include early and systematic phonics instruction. The State Board shall provide

opportunities for teachers, parents, and other interested parties to participate in this evaluation and revision.

Sec. 8.3. In order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction, the State Board of Education, in collaboration with the Board of Governors of The University of North Carolina and with the North Carolina Association of Independent Colleges and Universities, shall review, evaluate, and revise current teacher certification standards and teacher education programs within the institutions of higher education that provide coursework in reading instruction.

Sec. 8.4. Local boards of education are encouraged to review and revise existing board policies, local curricula, and programs of professional development in order to reflect changes to the standard course of study and to emphasize balanced, integrated, and effective programs of reading instruction that include early and systematic phonics instruction.

Sec. 8.5. (a) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 31, 1996, and annually thereafter on the comprehensive plan developed under Section 1 of this act. The first report shall include revisions made to the standard course of study, teacher certification standards, and teacher education programs. Subsequent reports shall address the effectiveness, based on factors including improved student performance in reading, of the implementation of the plan. The State Board may make recommendations to the General Assembly in any of its reports.

(b) The State Board shall disseminate to local boards of education by March 31, 1997, the changes to the standard course of study.

Sec. 8.6. G.S. 115C-81 is amended by adding a new subsection to read:

"(h) Character Education. -- Local boards of education may require the teaching of the following character traits in the public schools:

- (1) Courage. -- Having the determination to do the right thing even when others don't and the strength to follow your conscience rather than the crowd; and attempting difficult things that are worthwhile.
- (2) Good judgment. -- Choosing worthy goals and setting proper priorities; thinking through the consequences of your actions; and basing decisions on practical wisdom and good sense.
- (3) Integrity. -- Having the inner strength to be truthful, trustworthy, and honest in all things; acting justly and honorably.
- (4) Kindness. -- Being considerate, courteous, helpful, and understanding of others; showing care, compassion, friendship, and generosity; and treating others as you would like to be treated.
- (5) Perseverance. -- Being persistent in the pursuit of worthy objectives in spite of difficulty, opposition, or discouragement; and exhibiting patience and having the fortitude to try again when confronted with delays, mistakes, or failures.

- (6) Respect. -- Showing high regard for authority, for other people, for self, for property, and for country; and understanding that all people have value as human beings.
- (7) Responsibility. -- Being dependable in carrying out obligations and duties; showing reliability and consistency in words and conduct; being accountable for your own actions; and being committed to active involvement in your community.
- (8) Self-Discipline. -- Demonstrating hard work and commitment to purpose; regulating yourself for improvement and restraining from inappropriate behaviors; being in proper control of your words, actions, impulses, and desires; choosing abstinence from premarital sex, drugs, alcohol, and other harmful substances and behaviors; and doing your best in all situations."

Sec. 8.7. G.S. 115C-98 is amended by adding a new subsection to read:

"(b1) A local board of education may establish a community media advisory committee to investigate and evaluate challenges from parents, teachers, and members of the public to textbooks and supplementary instructional materials on the grounds that they are educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of the students. The State Board of Education shall review its rules and policies concerning these challenges and shall establish guidelines to be followed by community media advisory committees.

The local board, at all times, has sole authority and discretion to determine whether a challenge has merit and whether challenged material should be retained or removed."

----- LOCAL FLEXIBILITY

Sec. 9. G.S. 115C-84(d) is repealed.

Sec. 10. G.S. 115C-302(a)(1) reads as rewritten:

- "(1) Academic Teachers. -- Regular state-allotted teachers shall be employed for a period of 10 calendar months. Each local board of education shall establish a set date on which monthly salary payments to regular State-allotted teachers shall be made. This set pay date may differ from the end of the calendar month of service. Teachers shall only be paid for the days employed as of the set pay date. Payment for a full month when days employed are less than a full month is prohibited as this constitutes prepayment. Teachers employed for a period of 10 calendar months in year-round schools shall be paid in 12 equal installments. Any individual teacher who is not employed in a year-round school may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar

months employment shall be annual vacation leave at the same rate provided for State employees, computed at one twelfth (1/12) of the annual rate for State employees for each calendar month of employment; which shall be provided by each local board of education at a time when students are not scheduled to be in regular attendance. However, vacation leave for instructional personnel who do not require a substitute shall not be restricted to days that students are not in attendance. Included within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Commission for State employees; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take an annual vacation day or to make up the day at a time agreed upon by the employee and the employee's immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of state-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. If one or more scheduled teacher workdays are displaced due to hazardous weather conditions, a local board may select dates, including dates beyond the 10 calendar months during which teachers and their supervisors may agree to make up the displaced days provided the workdays fall within the fiscal year. Local boards may approve school improvement plans that include teacher workdays outside the 10 calendar months provided the workdays fall within the fiscal year. A teacher and the teacher's supervisor may agree to schedule workdays outside the 10 calendar months provided the workdays fall within the fiscal year. Teachers may be paid on the tenth calendar month pay date for workdays scheduled to occur after the tenth calendar month but before the end of the fiscal year. A teacher who resigns, is dismissed, or whose contract is not renewed and who fails to make up previously agreed upon workdays scheduled after the 10 calendar months shall repay to the local board any salary payments owed due to the failure to make up the workdays. A teacher who continues to be employed by a local board but fails to make up previously agreed upon workdays scheduled after the 10 calendar months may be subject to dismissal under G.S. 115C-325. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule."

Sec. 11. G.S. 115C-47(23) reads as rewritten:

"(23) To Purchase Equipment and Supplies. -- They Local boards shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a), G.S. 115C-522(a) and 115C-528."

Sec. 12. G.S. 115C-47(28) reads as rewritten:

"(28) To Enter Lease Purchase ~~Contracts for Automobiles, and Installment Purchase Contracts.~~ -- Local boards may purchase automobiles by installment contracts that create in the property purchased a security interest to secure payment of the purchase money. A contract entered into under this subdivision is subject to the provisions of Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2). The lease purchase contract shall provide that there be no recourse for default in payments under the contract other than return of the automobile. The taxing power of any tax levying authority is not and may not be pledged directly or indirectly to secure any moneys due the seller, enter into lease purchase and installment purchase contracts as provided in G.S. 115C-528."

Sec. 13. G.S. 115C-522(a) reads as rewritten:

"(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase."

Sec. 14. Article 37 of Chapter 115C is amended by adding a new section to read:

"§ 115C-528. Lease purchase and installment purchase contracts for certain equipment.

(a) Local boards of education may purchase or finance the purchase of automobiles; school buses; mobile classroom units; photocopiers; and computers, computer hardware, computer software, and related support services by lease purchase contracts and installment purchase contracts as provided in this section. Computers, computer hardware, computer software, and related support services purchased under this section shall meet the technical standards specified in the North Carolina Instructional Technology Plan as developed and approved under G.S. 115C-102.6A and G.S. 115C-102.6B.

(b) A lease purchase contract under this section creates in the local board the right to possess and use the property for a specified period of time in exchange for periodic payments and shall include either an obligation or an option to purchase the property during the term of the contract. The contract may include an option to upgrade the property during the term. A local board may exercise an option to upgrade without rebidding the contract.

(c) An installment purchase contract under this section creates in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(d) The term of a contract entered into under this section shall not exceed the useful life of the property purchased. An option to upgrade shall be considered in determining the useful life of the property.

(e) A contract entered into under this section shall be considered a continuing contract for capital outlay and subject to G.S. 115C-441(c1).

(f) A contract entered into under this section is subject to Article 8 of Chapter 159 of the General Statutes, except for G.S. 159-148(a)(4) and (b)(2).

(g) Subsections (e) and (f) of this section shall not apply to contracts entered into under this section so long as the term of each contract does not exceed three years and the total amount financed during any three-year period is no greater than two hundred fifty thousand dollars (\$250,000) or is no greater than three times the local board's annual State allocation for classroom materials, equipment, and instructional supplies, whichever is less. The local board shall submit information, including the principal and interest paid and the amount of outstanding obligation, concerning these contracts as part of the annual budget it submits to its board of county commissioners under Article 31 of this Chapter.

(h) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a local board to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any property financed or purchased by the contract.

(i) No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section."

Sec. 15. The Information Resource Management Commission shall develop and annually revise guidelines for determining the useful life of computers purchased under G.S. 115C-528. The Division of Purchase and Contract shall develop and periodically revise guidelines for determining the useful life of automobiles, school buses, and photocopiers purchased under G.S. 115C-528. The Local Government Commission shall develop and periodically revise guidelines for determining the useful life of mobile classroom units purchased under G.S. 115C-528. Guidelines for computers and photocopiers shall include provisions for upgrades during the term of

the contract. The Information Resource Management Commission, the Division of Purchase and Contract, and the Local Government Commission shall provide their respective guidelines to the State Board of Education by November 1, 1996. The State Board of Education shall provide the guidelines to local boards of education by January 1, 1997.

Sec. 15.1. (a) The State Board of Education shall develop and implement a pilot program allowing selected local school administrative units to purchase supplies, equipment, and materials from noncertified sources. In developing the program, the State Board shall collaborate with the Department of Administration on establishing standards, specifications, and any other measures necessary to implement and evaluate the pilot program. The State Board shall initially select twelve (12) local school administrative units that are diverse in geography and size to participate in the pilot program. If the State Board thereafter determines that the pilot program is effective, efficient, and in the best interest of the public schools, the State Board shall have the authority to expand the pilot program to additional local school administrative units.

(b) Local school administrative units participating in the pilot program shall have the authority to purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;
- (2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1;
- (3) The local school administrative unit documents in writing the cost savings; and
- (4) The local school administrative unit shall provide annually by August 15 an itemized report of the cost savings to the State Board of Education.

(c) The requirements listed in subsection (b) of this section shall not apply to purchases from noncertified sources that fall below the economic ordering quantity of a State term contract.

(d) The State Board of Education shall provide to the Department of Administration copies of the itemized annual reports produced by the local school administrative units participating in the pilot program. The State Board shall evaluate the information provided by the participating units and shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by October 1, 1997, and annually thereafter.

Sec. 16. G.S. 115C-326 reads as rewritten:

"§ 115C-326. Performance standards and criteria for professional employees; law suits arising out of this section.

(a) The State Board of Education, in consultation with local boards of education, shall develop uniform performance standards and criteria to be used in evaluating professional public school employees. It shall develop rules and regulations to recommend the use of these standards and criteria in the employee evaluation process. The performance standards and criteria

~~shall be adopted by the Board by July 1, 1982, and may be modified in the discretion of the Board.~~

Local boards of education shall adopt rules and regulations by July 1, 1982, to provide for annual the evaluation of all professional employees defined as teachers by in G.S. 115C-325(a)(6). All teachers shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated less frequently. Local boards may also adopt rules and regulations requiring the annual evaluation of other school employees not specifically covered in this section. Local boards may develop and use alternative evaluation approaches for teachers provided the evaluations are properly validated. Local boards that do not develop alternative evaluations ~~Rules and regulations adopted by local boards shall utilize the performance standards and criteria adopted by the State Board of Education, but are not limited to those standards and criteria. Education pursuant to the first paragraph of this section; however, the standards and criteria used by local boards are not to be limited by those adopted by the State Board of Education.~~

(b) If any claim is made or any legal action is instituted against an employee of a local school administrative unit on account of an act done or an omission made in the course of the employee's duties in evaluating employees pursuant to this section, the local board of education, if the employee is held not liable, shall reimburse the employee for reasonable attorney's fees.

~~(c) The State Board of Education shall recommend to the General Assembly by December 1, 1986, a program to remedy deficiencies and difficulties revealed through the evaluation process required by this section and to develop new skills on the part of classroom teachers."~~

Sec. 17. G.S. 115C-47 is amended by adding a new subdivision to read:

"(33a) To Approve and Use Textbooks Not Adopted by State Board of Education. -- Local boards of education shall have the authority to select, procure, and use textbooks not adopted by the State Board of Education as provided in G.S. 115C-98(b1)."

Sec. 18. G.S. 115C-85 reads as rewritten:

"§ 115C-85. *Textbook needs are determined by course of study.*

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks.

As used in this part, 'textbook' means systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.

Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the ~~State~~, State except as provided in G.S. 115C-98(b1)."

Sec. 19. G.S. 115C-98 reads as rewritten:

"§ 115C-98. *Local boards of education to provide for local operation of the textbook ~~program and program~~, the selection and procurement of other instructional ~~materials~~, materials, and the use of nonadopted textbooks.*

(a) Local boards of education shall adopt rules ~~and regulations~~ not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, ~~audio-visual~~ audiovisual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(b1) Local boards of education may:

- (1) Select, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and courses; and
- (2) Approve school improvement plans developed under G.S. 115C-105.22 that include provisions for using textbooks that have not been adopted by the State Board of Education for selected grade levels and courses.

All textbook contracts made under this subsection shall include a clause granting to the local board of education the license to produce braille, large print, and audiocassette tape copies of the textbooks for use in the local school administrative unit.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the local school administrative units, may be used for the above-stated purposes."

Sec. 20. G.S. 115C-112 is repealed.

Sec. 21. G.S. 115C-391 is amended by adding a new subsection to read:

"(g) Notwithstanding the provisions of this section, the policies and procedures for the discipline of students with disabilities shall be consistent with federal laws and regulations."

----- CONFORMING CHANGES

Sec. 22. G.S. 115C-105.3 reads as rewritten:

"§ 115C-105.3. Purpose.

The purpose of the Commission is to develop high and clearly defined education standards for the public schools of North Carolina. These standards shall specify the skills and the knowledge that high school graduates should possess in order to be competitive in the modern economy. The purpose of the Commission is also to develop fair and valid assessments to assure that high school graduates in North Carolina meet these standards. No later than the Spring semester of the year 2000 or as soon as the State Board of Education adopts the standards and system of assessments, every graduating high school senior shall be required to achieve these standards as a condition for receiving a diploma.

These high standards and assessments shall focus on the key skills needed by students as they strive to be successful after high school and shall reflect the high expectations for every student demanded by the State's education mission in G.S. 115C-81(a), 115C-238.1, and 115C-238.13(a), 115C-81(a) and G.S. 115C-105.20. Once these key skills are identified, parents, teachers, and the entire school community should be encouraged to help each student meet the student's fullest potential."

Sec. 23. G.S. 115C-238.23 reads as rewritten:

"§ 115C-238.23. *Implementation by local school boards.*

If a school administrative unit decides to proceed with the project the following procedures shall be followed:

(a) The local board in a participating local school administrative unit shall select a school building that is under construction as its first school under the project.

(b) The local board shall issue a request for proposals for leadership teams to bid to operate the selected school. A team shall mean three or more individuals. To reflect the diversity required to implement the purpose of the project defined in G.S. 115C-238.22, the abilities and experience of team members may include: administrative and educational policy and planning skills; familiarity with technology for schools; management and classroom experience; and familiarity with the needs of diverse and special populations. One member shall be designated as the principal or leader of the team. At least twenty-five percent (25%) of the team members shall be certificated in accordance with the regulations of the State Board of ~~Education or G.S. 115C-238.6, Education.~~

Team members awarded the contract shall, if not already, become employees of the local board and become subject to local personnel policies.

(c) The request for proposals shall include the following minimum requirements:

- (1) A statement of principles that the local board wants the bidding teams to address;
- (2) A specified amount of money available for the operation of the building, which amount shall be within the limits of funds available for the size of school being opened for bid;
- (3) A framework for accountability plans by which the success of the project site can be measured, which accountability plans shall include the student performance indicators adopted by the State Board of Education pursuant to G.S. 115C-238.1(3), the School Improvement and Accountability Act of 1989, and shall include

factors such as student, parent, and employee satisfaction, parental involvement, community service, and evidence of a focus on developing thinking and reasoning skills;

- (4) The student population of a Genesis school shall be representative of its local school administrative unit, shall be racially balanced, and students shall be assigned on a geographic basis;
- (5) The mission of the school shall not establish religion nor prohibit the free exercise thereof insofar as that is permitted in a public school by the North Carolina and United States Constitutions; and
- (6) Bidding teams shall address how the criteria listed in G.S. 115C-81(b) will be met or varied by the Genesis program.

The local board may include other requirements in the request for proposals.

(d) The local board shall secure private funding for any additional non-State and nonlocal funds required for the project before awarding a contract to a team to operate the selected school.

(e) The local board shall appoint an advisory committee composed of educators, elected officials, parents of children enrolled in the local school administrative unit, and community leaders from within and without the local school administrative unit to screen proposals for the school building and to make recommendations to the local board of education on the proposals.

The local board shall consider the recommendations of the advisory committee and shall award the contract. All contract negotiations and the award of the contract shall be conducted in open session notwithstanding G.S. 143-318.11(a)(9). The contract shall be for a term not to exceed four years. It may be terminated by the local board at any time for any reason it deems sufficient; it may be terminated by the team for any reason it deems sufficient, but only at the end of a school year and only with 60 days' written notice to the local board of education.

(f) The team that receives the contract shall interview and select all personnel for the building. The team may select personnel from the current employees of the local board. All teachers employed in a Genesis school shall hold or be qualified to hold a certificate in accordance with the regulations of the State Board of Education or ~~G.S. 115C-238.6, the School Improvement and Accountability Act of 1989.~~ The local board shall hire those persons selected by the team so long as those positions are within State, local, and other funds approved for this project by the local board. In no event shall a local board dismiss or demote any employee pursuant to G.S. 115C-325(e)(1)l. as a result of a Genesis project.

Hiring shall take place no later than July 1, prior to the opening of the new building. The team shall begin conducting training and planning sessions as staff is hired.

The local board or the management team may employ noncertificated persons on a temporary basis or for special projects.

(g) The participating school building team shall initiate a comprehensive accountability program immediately. The results shall be published annually and compared to those of traditional schools.

(h) After the third and fourth years of the project, the local board shall review student ~~outcome~~ achievement results of the existing project site. After the fourth year of the project the local board may decide whether to continue the project in the first school and whether an additional building within the school system shall be added to the project. If the board decides to expand the project to a second school the procedures outlined in this section shall be followed.

The second school chosen for the project shall be an existing school that is producing below average results in student achievement as compared to other schools in the unit. Criteria which may be considered to evaluate student achievement may include: test scores, the success of graduating students, attendance, graduation and dropout rates, the numbers of children enrolled in free lunch or Chapter 1 programs, the education level of the parents of children enrolled in the school, the teaching experience of the school staff, and whether the building has been successful in meeting the goals of the systemwide plan developed in accordance with G.S. 115C-238.1 through G.S. 115C-238.6, the School Improvement and Accountability Act of 1989."

Sec. 24. G.S. 115C-238.31(a) reads as rewritten:

"(a) Local school administrative units are encouraged to implement extended services programs that will expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. Extended services programs may be incorporated into building-level school improvement plans developed in accordance with G.S. 115C-238.3, 115C-105.22. ~~To implement extended services programs, local school administrative units may request waivers of State laws, regulations, and policies in accordance with Part 4 of this Article.~~ Calendar alternatives include, but are not limited to, after-school hours, before-school hours, evening school, Saturday school, summer school, and year-round school. Instructional programming may include, but is not limited to, tutoring, direct instruction, enrichment activities, study skills, and reinforcement projects."

Sec. 25. G.S. 115C-276(q) reads as rewritten:

"(q) To Assign School Principals. -- Subject to local board policy, the superintendent shall have the authority to assign principals to school buildings. When making an assignment, the superintendent shall consider (i) whether a principal has demonstrated the leadership ability to increase student achievement at a school where conditions indicated a significant risk of low student performance; and (ii) how to maintain stability at a school where, during the time the principal has been at a school, there has been significant improvement on end-of-course or end-of-grade tests and other accountability ~~indicators~~ measures developed by the State Board in accordance with G.S. 115C-238.1, of Education."

Sec. 26. G.S. 115C-302(e) reads as rewritten:

"(e) It is the policy of the State of North Carolina to enhance the teaching profession by providing teachers with career opportunities that do not remove them from the classroom; to encourage the development and implementation of a professional salary schedule that complements the system of differentiation; to have salaries of professional educators in

elementary and secondary schools based upon performance, degree attained, differentiation and the needs of the local school administrative unit; and to begin, in the school year beginning in 1986, a differential salary system based upon performance, differentiation, local availability of classroom teachers, geographical location of the employing local school administrative unit and such other factors as the local board of education shall deem necessary.

Performance shall be measured by ~~standardized~~ evaluations which are ~~routinely administered pursuant to G.S. 115C-326 by competent and trained administrators who have themselves demonstrated meritorious performance in the classroom.~~ G.S. 115C-326. Differentiation shall be based upon superior performance over a period of time plus other responsibilities. Needs of the local school administrative unit over and above the standard course of study shall be defined by the local board of education exclusively funded from revenues provided at the discretion of the board of county commissioners or from other local funds under the control of the local board of education.

Each salary may include a local variable component, determined locally and based upon the needs and condition of the local school administrative unit. This local variable component shall be paid from local revenue."

Sec. 27. Notwithstanding G.S. 115C-105.21A(1), the State Board of Education shall authorize pilot projects in the Mecklenburg County School Administrative Unit and in the Burke County School Administrative Unit so that the boards of education in those units may use State funds from the allotment for teacher assistants for certificated teachers in order to reduce class size or the student-teacher ratio in kindergarten through third grade, in accordance with school improvement plans developed under G.S. 115C-105.22. No waivers from the State Board of Education are required for this use of funds.

----STREAMLINE APA FOR ABC PLAN

Sec. 28. (a) G.S. 150B-21.2(a)(1) shall not apply to proposed rules adopted by the State Board of Education if the proposed rules are directly related to the implementation of this act.

(b) Notwithstanding G.S. 150B-21.3(b), a permanent rule that is adopted by the State Board of Education, is approved by the Rules Review Commission, and is directly related to the implementation of this act, shall become effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the rule specifies a later effective date. If the State Board of Education specifies a later effective date, the rule becomes effective upon that date. A permanent rule that is adopted by the State Board of Education that is directly related to the implementation of this act, but is not approved by the Rules Review Commission, shall not become effective.

(c) G.S. 150B-21.4(b1) shall not apply to permanent rules the State Board of Education proposes to adopt if those rules are directly related to the implementation of this act.

(d) The State Board of Education shall determine whether a proposed rule is directly related to this act based upon a finding that there is a rational relationship between the proposed rule and specific provisions of this act. A

proposed rule may create, amend, or repeal a rule. The State Board shall indicate in the notice of proposed text that the rule is directly related to the implementation of this act and that the Board is proceeding under the authority granted by this act.

(e) The State Board of Education shall provide written notice to all boards of county commissioners and all local boards of education of proposed rules that are directly related to the implementation of this act and that would affect the expenditures or revenues of a unit of local government under G.S. 150B-21.4(b). The notice shall state that a copy of the fiscal note may be obtained from the State Board.

(f) This section shall not apply to Sections 11-15.1 of this act.

---REPORTING

Sec. 29. (a) The State Board of Education shall submit a progress report to the Joint Legislative Education Oversight Committee by December 15, 1996, regarding the implementation of this act including accountability system performance standards, implementation plans for grades 9 through 12, the rules and guidelines adopted under this act, reliability and validity of assessments used for the purpose of this act, and an evaluation of the pilot programs developed under Section 17.10 of Chapter 507 of the 1995 Session Laws.

(b) Beginning October 15, 1997, and annually thereafter, the State Board of Education shall submit reports to the Joint Legislative Education Oversight Committee regarding the continued implementation of this act. Each report shall include information regarding the composition and activity of assistance teams, those schools that received incentive awards, those schools that were identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(c) The State Board of Education shall develop a plan that encourages teachers to seek employment or remain employed in schools that have been identified as low-performing under G.S. 115C-105.30. The plan shall include recommendations regarding additional compensation for (i) newly recruited teachers, and (ii) currently employed teachers whose students have shown significant improvement in academic performance. The State Board shall submit its plan to the Joint Legislative Education Oversight Committee by December 15, 1996.

Sec. 30. G.S. 143-57.1 reads as rewritten:

"§ 143-57.1. Furniture requirements contracts.

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes

unless otherwise provided for by the State Purchasing Officer pursuant to that Article.

- (2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.
- (3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless the State Purchasing Officer determines that three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be maintained as part of the bid file and subject to public inspection.
- (4) ~~Each agency purchasing under the contract shall make the most economical purchase that meets its needs. An agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, and other factors that it considers relevant.~~

(b) For purposes of this section, 'furniture requirements contract' means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items."

Sec. 31. With respect to a furniture requirements contract that is not currently under G.S. 143-57.1, an agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, and other factors that it considers relevant.

-----EFFECTIVE DATES

Sec. 32. (a) Section 15.1 of this act becomes effective July 1, 1996, and applies to State term contracts for which bids or offers are solicited on or after that date.

(b) The remainder of the act is effective upon ratification.

(c) Part 3 of Article 8B of Chapter 115C of the General Statutes, as rewritten in Section 3 of this act, applies to any school that has any grades of kindergarten through eighth grade beginning with the 1996-97 school year, and to the remaining schools beginning with the 1997-98 school year. The State Board shall establish appropriate deadlines for the development of school improvement plans after July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1125

CHAPTER 717

AN ACT TO ALLOW ONE-STOP BALLOTS TO BE DIRECTLY
INSERTED IN OPTICAL SCAN TABULATORS IN VARIOUS

- (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- ~~(6) Evidence is available which was unknown or unavailable to the defendant at the time of the trial, which could not with due diligence have been discovered or made available at that time, and which has a direct and material bearing upon the guilt or innocence of the defendant.~~
- (7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- (8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.
- (9) The defendant is in confinement and is entitled to release because his sentence has been fully served.

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

(d) For good cause shown, the defendant may be granted an extension of time to file the motion for appropriate relief. The presumptive length of an extension of time under this subsection is up to 30 days, but can be longer if the court finds extraordinary circumstances.

(e) Where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, he shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege.

(f) In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial or appellate counsel shall make available to the capital defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall

make available to the capital defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the capital defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the capital defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.

(g) The defendant may file amendments to a motion for appropriate relief at least 30 days prior to the commencement of a hearing on the merits of the claims asserted in the motion or at any time before the date for the hearing has been set, whichever is later. Where the defendant has filed an amendment to a motion for appropriate relief, the State shall, upon request, be granted a continuance of 30 days before the date of hearing. After such hearing has begun, the defendant may file amendments only to conform the motion to evidence adduced at the hearing, or to raise claims based on such evidence."

Sec. 2. G.S. 15A-1419 reads as rewritten:

"§ 15A-1419. When motion for appropriate relief denied.

(a) The following are grounds for the denial of a motion for appropriate relief: relief, including motions filed in capital cases:

- (1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. This subdivision does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment, judgment or the previous motion was made during the pendency of the direct appeal.
- (2) The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court, unless since the time of such previous determination there has been a retroactively effective change in the law controlling such issue.
- (3) Upon a previous appeal the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so.
- (4) The defendant failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a).

(b) Although the The court may shall deny the motion under any of the circumstances specified in this section, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious, unless the defendant can demonstrate:

(1) Good cause for excusing the grounds for denial listed in subsection (a) of this section and can demonstrate actual prejudice resulting from the defendant's claim; or

(2) That failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

(c) For the purposes of subsection (b) of this section, good cause may only be shown if the defendant establishes by a preponderance of the evidence that his failure to raise the claim or file a timely motion was:

(1) The result of State action in violation of the United States Constitution or the North Carolina Constitution including ineffective assistance of trial or appellate counsel;

(2) The result of the recognition of a new federal or State right which is retroactively applicable; or

(3) Based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim on a previous State or federal postconviction review.

A trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim may not constitute good cause, nor may a claim of ineffective assistance of prior postconviction counsel constitute good cause.

(d) For the purposes of subsection (b) of this section, actual prejudice may only be shown if the defendant establishes by a preponderance of the evidence that an error during the trial or sentencing worked to the defendant's actual and substantial disadvantage, raising a reasonable probability, viewing the record as a whole, that a different result would have occurred but for the error.

(e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:

(1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying offense; or

(2) The defendant establishes by clear and convincing evidence that, but for the error, no reasonable fact finder would have found the defendant eligible for the death penalty.

A defendant raising a claim of newly discovered evidence of factual innocence or ineligibility for the death penalty, otherwise barred by the provisions of subsection (a) of this section or G.S. 15A-1415(c), may only show a fundamental miscarriage of justice by proving by clear and convincing evidence that, in light of the new evidence, if credible, no reasonable juror would have found the defendant guilty beyond a reasonable doubt or eligible for the death penalty."

Sec. 3. G.S. 15-217.1 is recodified as G.S. 15A-1420(b1).

Sec. 4. G.S. 15A-1420, as amended by Section 3 of this act, reads as rewritten:

"§ 15A-1420. *Motion for appropriate relief; procedure.*

(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;

2. Before the judge who presided at trial;

3. Before the end of the session if made in superior court; and
 4. Within 10 days after entry of judgment;
 - b. State the grounds for the motion; ~~and~~
 - c. Set forth the relief ~~sought~~, sought; and
 - d. Be timely filed.
- (2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.
- (3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).
- (b) Supporting Affidavits.
- (1) A motion for appropriate relief made after the entry of judgment must be supported by affidavit or other documentary evidence if based upon the existence or occurrence of facts which are not ascertainable from the records and any transcript of the case or which are not within the knowledge of the judge who hears the motion.
 - (2) The opposing party may file affidavits or other documentary evidence.

(b1) ~~Filing petition With clerk; delivery of copy to district attorney; review of petition by judge.~~

~~The proceeding shall be commenced by filing with the clerk of superior court of the county in which the conviction took place a petition, with two copies thereof, verified by affidavit. One copy shall be delivered by the clerk to the district attorney of the prosecutorial district as defined in G.S. 7A-60 who prosecutes the criminal docket of the superior court of the county in which said petition is filed, either in person or by ordinary mail, and the clerk shall enter upon his docket the date and manner of delivery of such copy.~~

~~The clerk shall place the petition upon the criminal docket upon his receipt thereof. The clerk shall promptly after the delivery of copy to the district attorney bring the petition, or a copy thereof, to the attention of the resident judge or any judge holding the courts of the district or any judge holding court in the county. Such judge shall review the petition and make such order as he deems appropriate with respect to permitting the petitioner to prosecute such action without providing for the payment of costs, with respect to the appointment of counsel, and with respect to the time and place of hearing upon the petition. If it appears to the judge that substantial injustice may be done by any delay in hearing upon the matters alleged in the petition, he may issue such order as may be appropriate to bring the~~

~~petitioner before the court without delay, and may direct the district attorney to answer the petition at a time specified in the order, and the court shall thereupon inquire into the matters alleged as directed by the reviewing judge, as in the case of a writ of habeas corpus. If upon review of the petition it does not appear to the judge that an order advancing the hearing or other order is appropriate, he shall return the petition to the clerk with a notation to that effect.~~

Filing Motion With Clerk; Review of Motion by Judge.

- (1) The proceeding shall be commenced by filing with the clerk of superior court of the district wherein the defendant was indicted a motion, with service on the district attorney in noncapital cases, and service on both the district attorney and Attorney General in capital cases.
 - (2) The clerk, upon receipt of the motion, shall place the motion on the criminal docket. The clerk shall promptly bring the motion, or a copy of the motion, to the attention of the resident judge or any judge holding court in the county or district. In noncapital cases, the judge shall review the motion and enter an order whether the defendant should be allowed to proceed without the payment of costs, with respect to the appointment of counsel, and directing the State, if necessary, to file an answer. In capital cases, the judge shall review the motion and enter an order directing the State to file its answer within 60 days of the date of the order. If a hearing is necessary, the judge shall calendar the case for hearing without unnecessary delay.
- (c) Hearings, Showing of Prejudice; Findings.
- (1) Any party is entitled to a hearing on questions of law or fact arising from the motion and any supporting or opposing information presented unless the court determines that the motion is without merit. The court must determine, on the basis of these materials and the requirements of this subsection, whether an evidentiary hearing is required to resolve questions of fact. Upon the motion of either party, the judge may direct the attorneys for the parties to appear before him for a conference on any prehearing matter in the case.
 - (2) An evidentiary hearing is not required when the motion is made in the trial court pursuant to G.S. 15A-1414, but the court may hold an evidentiary hearing if it is appropriate to resolve questions of fact.
 - (3) The court must determine the motion without an evidentiary hearing when the motion and supporting and opposing information present only questions of law. The defendant has no right to be present at such a hearing where only questions of law are to be argued.
 - (4) If the court cannot rule upon the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence, and must make findings of fact. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present must be in writing.

- (5) If an evidentiary hearing is held, the moving party has the burden of proving by a preponderance of the evidence every fact essential to support the motion.
- (6) A defendant who seeks relief by motion for appropriate relief must show the existence of the asserted ground for relief. Relief must be denied unless prejudice appears, in accordance with G.S. 15A-1443.
- (7) The court must rule upon the motion and enter its order accordingly. When the motion is based upon an asserted violation of the rights of the defendant under the Constitution or laws or treaties of the United States, the court must make and enter conclusions of law and a statement of the reasons for its determination to the extent required, when taken with other records and transcripts in the case, to indicate whether the defendant has had a full and fair hearing on the merits of the grounds so asserted.

(d) Action on Court's Own Motion. -- At any time that a defendant would be entitled to relief by motion for appropriate relief, the court may grant such relief upon its own motion. The court must cause appropriate notice to be given to the parties."

Sec. 5. G.S. 15-194 reads as rewritten:

"§ 15-194. *Time for execution.*

~~Whenever the Supreme Court has filed an opinion upholding the sentence of death, or a stay of execution granted by any competent judicial tribunal or proceeding has expired or been terminated, or a reprieve by the Governor has expired or been terminated, a hearing shall be held in a superior court anywhere within the district where the case was tried to fix a new date for the execution of the original sentence. The district attorney shall promptly calendar such hearing. The condemned person shall be present at the hearing unless the condemned person has an attorney appearing at the hearing. The judge shall set the date of execution for not less than 60 days nor more than 90 days from the date of the hearing. The hearing may be conducted, whether or not in session, by any regular or special superior court judge resident in the district or assigned to hold court in this district wherever the case is docketed. The order fixing the date shall be recorded in the minutes of the court, and the clerk of the superior court shall immediately send a certified copy to the warden of the State penitentiary, at Raleigh.~~

In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. The warden of the State penitentiary at Raleigh shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 45 days from the date of receiving notification of any one of the following:

- (1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;
- (2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the

capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

- (3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);
- (4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);
- (5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or
- (6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The warden shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The clerk warden shall also send certified copies to the ~~condemned person, the condemned person's~~ capital defendant, the capital defendant's attorney, and the district attorney who prosecuted the ~~case, case,~~ and the Attorney General of North Carolina."

Sec. 6. G.S. 15A-1441 reads as rewritten:

"§ 15A-1441. Correction of errors by appellate division.

Errors of law may be corrected upon appellate review as provided in this Article. Article, except that review of capital cases shall be given priority on direct appeal and in State postconviction proceedings."

Sec. 7. G.S. 7A-451 is amended by adding the following subsections:

"(c) In any capital case, an indigent defendant who is under a sentence of death may apply to the superior court of the district where the defendant was indicted for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

- (1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

- (2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or
- (3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district. Upon application, supported by the defendant's affidavit, the superior court shall enter an order appointing two counsel if the court finds that the defendant is indigent and desires counsel. The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.

(d) The appointment of counsel as provided in subsection (c) of this section and the procedure for compensation shall comply with the Rules and Regulations Relating to the Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. The court may appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5).

(e) No counsel appointed pursuant to subsection (c) of this section shall have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made unless the defendant expressly requests continued representation and understandingly waives future allegations of ineffective assistance of counsel."

Sec. 8. This act is effective upon ratification. The deadline for filing a motion for appropriate relief in Section 1 applies to cases in which the trial court judgment is entered after October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 779

CHAPTER 720

AN ACT TO CREATE THE NORTH CAROLINA BOARD OF
EMPLOYEE ASSISTANCE PROFESSIONALS AND TO PROVIDE
FOR THE LICENSING OF EMPLOYEE ASSISTANCE
PROFESSIONALS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 31.

"Employee Assistance Professionals."§ 90-500. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Board' means the Board of Employee Assistance Professionals.

- (2) 'Consultation' means the act of giving expert advice on the role of an employee assistance professional in assisting troubled employees.
- (3) 'Employee assistance professional' means a person who provides the following services to the public in a program designed to assist in the identification and resolution of job performance problems in the workplace:
- a. Expert consultation and training of appropriate persons in the identification and resolution of job performance issues related to the employees' personal concerns.
 - b. The confidential, appropriate, and timely assessment of problems.
 - c. Short-term problem resolution for issues that do not require clinical counseling or treatment.
 - d. Referrals for appropriate diagnosis, treatment, and assistance to certified or licensed professionals when clinical counseling or treatment is required.
 - e. Establishment of linkages between workplace and community resources that provide such services.
 - f. Follow-up services for employees and dependents who use such services.
- (4) 'Certified employee assistance professional' means an employee assistance professional who is certified by the Employee Assistance Certification Commission and who has the necessary professional qualifications to provide the employee assistance program services listed in subdivision (2) of this section, which services can be worksite based and are designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns.
- (5) 'Employee Assistance Certification Commission' means the national body with the authority to certify employee assistance professionals based on experience and the passing of a national examination.

"§ 90-501. Board of Employee Assistance Professionals; members.

- (a) The Board of Employee Assistance Professionals is created.
- (b) The Board consists of five members to be appointed by the Governor. Members shall serve for terms of five years. All members must be residents of North Carolina.
- (c) The following requirements shall apply to appointments to the Board:
 - (1) Two members shall be licensed employee assistance professionals who are privately employed.
 - (2) One member shall not be directly or indirectly engaged in the employee assistance profession.
 - (3) Two members shall be licensed employee assistance professionals.
- (d) The licensed employee assistance professionals appointed pursuant to subdivision (1) or (3) of subsection (c) of this section must have been engaged in the active practice of being an employee assistance professional for no less than five years.

(e) The North Carolina Chapter of the Employee Assistance Professionals Association shall submit a list of at least three nominees for each appointment. The Governor may make appointments from this list.

(f) Any member of the Board shall be removed from the Board upon certification by the Board to the Governor that the member no longer satisfies the employment requirements set forth in subsection (c) of this section for appointment to the Board. The Governor shall appoint a replacement from a list of nominees submitted by the North Carolina Chapter of the Employee Assistance Professionals Association within 60 days of the Governor's receiving the list of nominees.

(g) Members shall serve until their successors are appointed and duly qualified. Any vacancy occurring on the Board shall be filled by the Governor appointing a member for the balance of the unexpired term. A Board member who has served a five-year term shall not be eligible for reappointment during the one-year period following the appointment of that member's successor.

(h) In making appointments to the Board, the Governor shall strive to ensure that at least one member serving on the Board is 60 years of age or older and that at least one member serving on the Board is a member of a racial minority.

(i) For each day engaged in the business of the Board, members shall receive compensation of fifty dollars (\$50.00) and shall receive reimbursement for actual expenses.

(j) Annually, the members of the Board shall elect a chair and a secretary.

(k) The Board shall meet as frequently as is reasonably necessary to implement the provisions of this Article. Three or more members of the Board shall constitute a quorum for the purpose of transacting business.

(l) For administrative purposes, the Board shall be an independent entity. The Department of Human Resources shall provide staff to the Board to assist the Board in transacting its business.

"§ 90-502. Powers and duties of the Board.

The Board shall:

(1) Approve educational programs and establish and prescribe the curricula and minimum standards for training required to prepare persons for licensure and licensure renewal under this Article.

(2) Adopt rules governing the issuance, renewal, suspension, and revocation of licenses.

(3) Establish minimum standards governing the activities and operations of licensed employee assistance professionals.

(4) Issue licenses.

(5) Establish and collect fees.

(6) Assess civil penalties as provided in this Article.

"§ 90-503. License requirements.

(a) An applicant must satisfy all of the following requirements to be eligible to be licensed under this Article:

(1) Have obtained a masters degree.

(2) Have obtained a degree in any field of human services at either the undergraduate degree level or the masters degree level.

- (3) Be certified by the Employee Assistance Certification Commission.
- (4) Maintain certification by being recertified by the Employee Assistance Certification Commission every three years by either passing an examination or by completing continuing education in accordance with rules adopted by the Board.

(b) Notwithstanding the requirements of subsection (a) of this section, a person who has received a certification as an employee assistance professional from the Employee Assistance Certification Commission may apply until January 1, 2000, to the Board for licensure and shall receive a license as an employee assistance professional upon proof of such certification and upon payment of a fee in an amount established by the Board.

(c) Licenses must be obtained by each individual employee assistance professional. A company or organization shall not be issued a license.

(d) Any person desiring to be licensed under this Article as an employee assistance professional shall apply to the Board on a form approved by the Board. The applicant shall submit with the application form a fee in an amount established by the Board. The applicant shall complete the application, submitting all information the Board deems necessary to evaluate the applicant.

(e) Each license shall be valid for a period of up to three years.

"§ 90-504. License renewals.

(a) Renewal of any license issued under the provisions of this Article may be accomplished by paying a fee in an amount established by the Board, submitting a renewal application, and otherwise complying with rules adopted by the Board.

(b) Any person licensed as an employee assistance professional shall renew his or her license according to rules adopted by the Board.

(c) If any licensee fails to renew his or her license within 60 days after the date the application becomes due, the license of that person shall be revoked automatically without further notice or hearing, unless the licensee specifically requests an extension.

"§ 90-505. Requirements for persons licensed out-of-state.

An applicant who is currently certified by the Employee Assistance Certification Commission or licensed in another state and who:

- (1) Is in good standing in another state;
- (2) Meets the licensure requirements approved by the Board;
- (3) Resides in this State, or resides outside the State and is employed by a service operating in this State; and
- (4) Submits an application with a fee in an amount established by the Board

is eligible to apply for a license under this Article.

"§ 90-506. Violations; enforcement; penalties.

(a) Whenever the Board has reason to believe that a violation of this Article, any rule adopted by the Board, or any order of the Board is occurring or about to occur, the Board may initiate any of the following enforcement measures:

- (1) Commence a civil action in any court of the county in which the alleged offender resides or does business. The Board may seek

and the court may grant any form of relief, including injunctive relief.

(2) If the activity involved appears to be a criminal offense, refer the matter to the appropriate district attorney for prosecution.

(3) For any person who fails to be licensed as required by this Article, the Board may assess a civil penalty against that person in an amount not to exceed fifty dollars (\$50.00) per day for each violation.

(b) In assessing a penalty under subdivision (3) of subsection (a) of this section, the Board shall consider all of the following:

(1) Whether the amount of the penalty imposed will be a substantial economic deterrent to the violator.

(2) The circumstances leading to the violation.

(3) The severity of the violation and the risk of harm to the employee.

(4) Any economic benefits gained by the violator as a result of the violation.

(c) Civil penalties assessed by the Board pursuant to subdivision (3) of subsection (a) of this section are final 30 days after the date the assessment is served upon the alleged violation, unless the alleged violator seeks review by the Board within that time.

"§ 90-507. Hearings.

Hearings before the Board on enforcement or disciplinary actions shall be conducted in accordance with Article 3A of Chapter 150B of the General Statutes.

"§ 90-508. Representation as licensed professional.

No person shall, by verbal claim, advertisement, letterhead, card, or in any other way, represent that he or she is a licensed employee assistance professional unless that person possesses a valid license pursuant to this Article. Nothing in this Article shall prohibit an unlicensed person from providing the services described in G.S. 90-500(3) if that person refrains from representing that he or she is a licensed employee assistance professional.

"§ 90-509. Other prohibited activities.

The Board may deny, suspend, or revoke any license, or otherwise discipline an applicant or holder of a license who the Board finds engaged in one or more of the following activities:

(1) Willfully or repeatedly violating any provision of this Article or any rule of the Board adopted pursuant to this Article.

(2) Fraudulently or deceptively procuring or attempting to procure a license, presenting evidence of qualification to the Board, or processing the examination to secure a license.

(3) Willfully failing to display a license.

(4) Fraudulently or deceptively misrepresenting or engaging in dishonest or illegal practices in or connected with the practice of employee assistance.

(5) Circulating knowingly untrue, fraudulent, misleading, or deceptive advertising.

- (6) Engaging in gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence, or incompetence in the course of the practice of employee assistance.
- (7) Unprofessionally or unethically engaging in practices in connection with the practice of employee assistance, which activities are in violation of the standards of professional conduct prescribed by the Board.
- (8) Engaging in conduct reflecting unfavorably upon the profession of employee assistance professionals.
- (9) Willfully making any false statement as to material in any oath or affidavit when such statement is required by this Article.
- (10) Being convicted of a felony five years prior to applying for a license or while licensed.
- (11) Permitting or allowing another to use another person's license for the purpose of providing or offering employee assistance services.
- (12) Engaging in practice under a false or assumed name, or impersonating another practitioner of a like, similar, or different name.
- (13) Failing to inform clients fully about the limits of confidentiality in a given situation, the purposes for which information is obtained, and how it may be used.
- (14) Referring a client to further obtain services from a source that would directly or indirectly financially profit the referring licensed employee assistance professional when these services are not in the best interest of the client.
- (15) Denying a client's reasonable requests for access to any records concerning the client, or, when providing clients with access to records, failing to take due care to protect the confidences of other information contained in those records.
- (16) Failing to obtain the informed consent of a client before taping, recording, or permitting third-party observation of the client's activities.
- (17) Failing to clarify the nature and directions of an employee assistance professional's loyalties and responsibilities as mandated by law and as mandated by their contractual agreement with a company.
- (18) Failing to fully inform consumers as to the purpose and nature of evaluative research, treatment, or educational training or failing to freely acknowledge that a client, student, or participant in research has freedom of choice with regard to his or her participation.
- (19) Failing to attempt to terminate a consulting relationship when it is reasonably clear that the relationship is not benefiting the consumer. An employee assistance professional who finds that his or her services are being used by employers beyond their contractual agreement, or beyond their licensed qualification, in a way that is not beneficial to the participants, shall make his or her observations known to the responsible persons and propose modification or termination of the engagement. Upon request,

the Board shall advise and clarify in regard to such matters within a reasonable amount of time, and shall not revoke the employee assistance professional's license.

- (20) Consenting through a contractual agreement to provide services such as prolonged therapy, that the employee assistance professional is not licensed to provide.

"§ 90-510. Investigations; good faith reports of violations.

The Board may, on its own motion, investigate any report indicating that a licensee is or may be in violation of the provisions of this Article. Any person who in good faith reports to the Board any such information shall not be subject to suit for civil damages as a result of reporting this information.

"§ 90-511. Employee assistance professional practice by members of other professional groups.

(a) Nothing in this Article shall be construed to prevent qualified members of other professional groups, as determined by the Board, including, but not limited to, licensed psychologists, licensed psychological associates, licensed clinical social workers, nurses, physicians, or members of the clergy, from doing or advertising that they perform the work of an employee assistance professional consistent with the accepted standards of their respective professions.

(b) Nothing in this Article shall be construed to prevent a staff member of a community mental health center from advertising, claiming, working, or in any other way representing that the member is an employee assistance professional consistent with the standards of a mental health center."

Sec. 2. Notwithstanding the provisions of G.S. 90-501(b) to the contrary, as enacted in Section 1 of this act, the Governor shall make initial appointments to the Board of Employee Assistance Professionals created in G.S. 90-501, as enacted by Section 1 of this act, to serve for terms as follows:

- (1) For the initial appointments made pursuant to G.S. 90-501(c)(1), one shall serve for a one-year term, and the other shall serve for a three-year term.
- (2) The initial appointments made pursuant to G.S. 90-501(c)(2) shall serve for a two-year term.
- (3) For the initial appointments made pursuant to G.S. 90-501(c)(3), one shall serve for a four-year term, and the other shall serve for a five-year term.

The Governor shall make initial appointments to the Board within 90 days of the effective date of this section.

Notwithstanding the provisions of G.S. 90-501, as enacted by Section 1 of this act, each initial Board member, except the member who is not directly or indirectly engaged as an employee assistance professional, shall have five years continuous experience as an employee assistance professional immediately preceding his or her appointment and currently shall be certified by the Employee Assistance Certification Commission.

Sec. 3. This act becomes effective January 1, 1997.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

AN ACT TO REPEAL THE STATUTE THAT NAMED "NEW ROAD" IN CRAVEN COUNTY, TO AUTHORIZE CRAVEN COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY TAX, AND TO REVISE THE EXISTING CRAVEN COUNTY ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Chapter 378 of the 1991 Session Laws is repealed.

Sec. 2. Chapter 980 of the 1983 Session Laws, as amended by Chapter 710 of the 1985 Session Laws, reads as rewritten:

"AN ACT TO ALLOW CRAVEN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

"Section 1. Levy of Tax. -- (a) The Board of Commissioners of Craven County may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax.

(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

"Sec. 2. -- Rate of Tax. The room occupancy and tourism development tax that may be levied under Section 1 of this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar enterprise within the county now subject to the three percent (3%) sales tax imposed by the State under G.S. ~~105-164.4(3)~~, 105-164.4(a)(3). This tax is in addition to any local sales tax.

"Sec. 2.1. Additional Occupancy Tax. -- In addition to the tax authorized by Section 1 of this act, the Craven County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any accommodations taxable under Section 1 of this act. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with the provisions of this act. Craven County may not levy a tax under this section unless it also levies the tax under Section 1 of this act.

"Sec. 3. -- Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

- (1) religious organizations;
- (2) a business that offers to rent fewer than five units;
- (3) educational organizations; and
- (4) summer camps.

"Sec. 4. Administration of Tax. -- (a) Returns. -- Any tax levied under this act is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax

shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by Craven County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.

The county shall design, print, and furnish to all affected businesses in Craven County the necessary forms for filing returns and instructions to ensure the collection of the tax. A return filed with the county tax collector under this act is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(b) Penalties. -- A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Craven County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes. Any person, firm, corporation, or association failing or refusing to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission.

(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.

(d) Any person who willfully attempts in any manner to evade the tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

"Sec. 5. Collection of Tax. -- Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the levy of the tax, collect the three percent (3%) tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Craven County. The tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all affected businesses in Craven County the necessary forms for filing returns and instructions to ensure the collection of the tax.

"Sec. 6. Disposition of Taxes Collected. -- (a) 'Net Proceeds' Defined. -- Craven County shall remit the net proceeds of the occupancy tax to the Craven County Tourism Development Authority. "Net As used in this act, the term 'net proceeds' means gross proceeds less the cost to the county of

administering and collecting the tax, not to exceed three percent (3%) of the gross proceeds of the tax.

(a1) Tax Levied Under Section 1. -- Craven County shall remit the net proceeds of the occupancy tax levied under Section 1 of this act to the Craven County Tourism Development Authority. The County Tourism Development Authority shall allocate the occupancy tax revenue remitted to it for the following purposes:

- (1) Direct advertising costs for visitor promotions, conventions, or tourism, including outdoor advertising, print media, broadcast media, and brochures;
- (2) Marketing and promotions expenses, including test market programs, consultant fees, entertainment, housing expenses, travel expenses, and registration fees;
- (3) Operating expenses for the Visitor Information Center, including postage, telephone, supplies, dues, subscriptions, equipment, rent, and overhead allocation;
- (4) Salaries, benefits, and expenses for Visitor Information Center personnel; and
- (5) Other expenses that aid and encourage visitor promotions, conventions, or tourism.

~~Thirty-five Effective until June 30, 2013, thirty-five percent (35%) of the net proceeds in excess of one hundred thousand dollars (\$100,000) remitted to the Authority in a calendar pursuant to this subsection in a fiscal year shall be allocated to the funding of museums, meeting facilities, civic centers, parking facilities, or other projects specifically intended primarily for visitor, tourist, or convention programs, projects, and activities. Room Tax Trust Fund created pursuant to subsection (c) of this section.~~

(b) Authority May Contract. -- The County Tourism Development Authority may contract with appropriate organizations or agencies to assist it in carrying out the above purposes, purposes provided in this section.

(c) Tax Levied Under Section 2.1. -- Craven County shall credit the net proceeds of the tax levied under Section 2.1 of this act to a separate Room Tax Trust Fund. Monies in the Room Tax Trust Fund may be used only to construct, maintain, operate, or market a convention or meeting facility in New Bern and a tourist center in Havelock. Any monies distributed to the City of New Bern or the City of Havelock from the Room Tax Trust Fund shall be maintained in and disbursed from a separate trust fund within the respective city's organizational chart of accounts.

"Sec. 7. Appointment, Duties of Tourism Development Authority. -- (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this act, it shall also adopt a resolution creating a County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following members:

- (1) One county commissioner appointed by the Board of Commissioners of Craven County;
- (2) After the first full year of collections under this act, one person appointed by the governing board of each municipality from

which, during the previous 12-month period, at least ten percent (10%) of the gross proceeds of the occupancy tax were collected;

- (3) One person representing motel operators, appointed by the board of commissioners;
- (4) One person with demonstrated interest in and support of tourism development, appointed by the New Bern-Craven Chamber of Commerce;
- (4a) One person with demonstrated interest in and support of tourism development, appointed by the Havelock Chamber of Commerce;
- (5) One person representing Tryon Palace Complex, appointed by the Tryon Palace Commission;
- (6) Two at-large members with a demonstrated interest in conventions and tourism development, appointed by the other members of the Authority; and
- (7) The finance officer of Craven County, who shall serve as a nonvoting, ex officio ~~member,~~ member; and
- (8) The Executive Director of the Authority, who shall serve as a nonvoting, ex officio member.

(b) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the initial members who shall serve the following terms:

- (1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) shall serve a one-year term;
- (2) Members appointed pursuant to subdivisions (a)(3) and (a)(4) shall serve a two-year term; and
- (3) Members appointed pursuant to subdivisions (a)(5) and (a)(6) shall serve a three-year term.

(c) A member appointed under subdivision (a)(2) shall serve his full term, regardless whether, during a 12-month period of his term, the percentage of the gross proceeds of the occupancy tax that are collected from the municipality he represents is less than ten percent (10%).

(d) Members may serve no more than two consecutive three-year terms. The members shall elect a chairman, who shall serve for a term ~~of two years,~~ established in the bylaws of the Authority. The Authority shall meet at the call of the chairman and shall adopt rules of procedure to govern its meetings. The finance officer for Craven County shall be the ex officio finance officer of the Authority.

(e) The Tourism Development Authority shall report at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding year in such detail as the board may require.

"Sec. 8. Repeal of Levy. -- (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax ~~in Craven County,~~ authorized in Section 1 of this act, but no the repeal of taxes levied under Section 1 of this act shall be not become effective until the end of the fiscal year in which the ~~repeal~~ resolution was adopted.

(a1) The board of county commissioners may by resolution repeal the levy of the room occupancy tax authorized in Section 2.1 of this act, but the repeal of taxes levied under Section 2.1 of this act shall not become effective until the later of June 30, 2018, or the end of the fiscal year in which the resolution was adopted.

(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.

"Sec. 9. This act is effective upon ratification."

Sec. 3. This act is effective upon ratification. Section 2 of this act applies to taxes collected on or after the effective date of a tax levied under Section 2.1 of Chapter 980 of the 1983 Session Laws, as amended by Section 2 of this act.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1138

CHAPTER 722

AN ACT TO GRANT ADDITIONAL AUTHORITY TO THE TOWN OF APEX TO CHARGE FEES IN LIEU OF PARKLAND OR OPEN SPACE DEDICATION BASED ON A PER-UNIT FORMULA AND TO CONDITION SITE PLAN APPROVAL UPON DEDICATION, RESERVATION, IMPROVEMENT, OR PAYMENT OF FEES IN LIEU.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Apex, being Chapter 356 of the 1985 Session Laws, is amended by adding two new sections to read:

"Sec. 6.6. In addition to the authority granted by G.S. 160A-372, the Town of Apex, in the exercise of its powers to regulate the subdivision of land subject to its jurisdiction, is authorized to determine the amount of funds to be paid as a fee in lieu of parkland or open space dedication by using a formula based upon a charge per dwelling unit of the development or subdivision without reference to property tax value; provided that this charge may vary depending on the size or type of the dwelling unit; and further provided that the collection, maintenance, and use of such funds are otherwise consistent with G.S. 160A-372. In no event may a fee in lieu of parkland or open space dedication that is required for a development or subdivision exceed the fair market value of the land area that would have otherwise been required to be dedicated. For the purpose of this section, fair market value is to be determined with respect to a development or subdivision, at the time the initial development application submittal is made to the Town of Apex.

"Sec. 6.7. As part of its zoning regulations, the Town of Apex shall have the same authority to condition the approval of site plans upon the dedication or reservation of property, the making of public improvements, or the payment of fees in lieu of dedication, reservation, or public improvements as the Town of Apex has under its powers to regulate the subdivision of land.

For the purpose of this section, 'site plan' excludes single family detached residences."

Sec. 2. This act is effective upon ratification. This act does not apply to land located in Chatham County.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1187

CHAPTER 723

AN ACT TO PERMIT THE LOCAL BOARDS OF EDUCATION IN CERTAIN COUNTIES TO SCHEDULE LONGER SCHOOL DAYS SO AS TO OFFSET DAYS LOST DUE TO INCLEMENT WEATHER.

The General Assembly of North Carolina enacts:

Section 1. A local board of education may schedule school days longer than the minimum required instructional hours so as to offset days lost due to inclement weather. For the purposes of computing the length of the school term and determining pay of school personnel, every additional hour scheduled may be used to offset one hour of a school day lost due to inclement weather.

Sec. 2. A local board of education may schedule longer school days under Section 1 of this act only after all extra calendar days required under G.S. 115C-84(c) have been scheduled to be used as instructional days.

Sec. 3. This act applies only to the Cherokee, Clay, Duplin, Henderson, Macon, Mitchell, Pamlico, Craven, Rockingham and Transylvania County School Administrative Units. The local board of education in each of these counties shall evaluate the educational effectiveness of this type of scheduling and shall report the results of this evaluation to the State Board of Education for the first two years following the ratification of this act.

Sec. 4. This act is effective upon ratification and applies to school years beginning with the 1996-97 school year.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1208

CHAPTER 724

AN ACT TO PERMIT THE LOCAL BOARDS OF EDUCATION IN CERTAIN COUNTIES TO SCHEDULE LONGER SCHOOL DAYS SO AS TO OFFSET DAYS LOST DUE TO INCLEMENT WEATHER.

The General Assembly of North Carolina enacts:

Section 1. A local board of education may schedule school days longer than the minimum required instructional hours so as to offset days lost due to inclement weather. For the purposes of computing the length of the school term and determining pay of school personnel, every additional hour scheduled may be used to offset one hour of a school day lost due to inclement weather.

Sec. 2. A local board of education may schedule longer school days under Section 1 of this act only after all extra calendar days required under G.S. 115C-84(c) have been scheduled to be used as instructional days.

Sec. 3. This act applies only to the Avery, Gaston, Graham, Haywood, Jackson, Jones, Lenoir, Madison, McDowell, Polk, Swain, Wake, Watauga, and Yancey County School Administrative Units. The local board of education in each of these counties shall evaluate the educational effectiveness of this type of scheduling and shall report the results of this evaluation to the State Board of Education for the first two years following the ratification of this act.

Sec. 4. Chapter 703 of the 1983 Session Laws is repealed.

Sec. 5. This act is effective upon ratification and applies to school years beginning with the 1996-97 school year.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 33

CHAPTER 725

AN ACT TO MAKE VARIOUS CHANGES IN THE CRIMINAL JURISDICTION OF DISTRICT AND SUPERIOR COURT AND TO MAKE VARIOUS CRIMINAL LAW PROCEDURAL CHANGES.

The General Assembly of North Carolina enacts:

PART 1. CLASS H AND I FELONY GUILTY PLEAS IN DISTRICT COURT

Section 1. G.S. 7A-272 is amended by adding the following new subsections to read:

"(c) With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony if:

(1) The defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense; or

(2) The defendant has been indicted for a criminal offense but the defendant's case is transferred from superior court to district court pursuant to G.S. 15A-1029.1.

(d) Provisions in Chapter 15A of the General Statutes apply to a plea authorized under subsection (c) of this section as if the plea had been entered in superior court, so that a district court judge is authorized to act in these matters in the same manner as a superior court judge would be authorized to act if the plea had been entered in superior court, and appeals that are authorized in these matters are to the appellate division."

Sec. 2. The catch line for G.S. 7A-272 reads as rewritten:

"§ 7A-272. Jurisdiction of district ~~court~~ court; concurrent jurisdiction in guilty or no contest pleas for certain felony offenses; appellate and appropriate relief procedures applicable."

Sec. 3. Article 32 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-644.1. Filing of information when plea of guilty or no contest in district court to Class H or I felony.

A defendant who pleads guilty or no contest in district court pursuant to G.S. 7A-272(c)(1) shall enter that plea to an information complying with G.S. 15A-644(b), except it shall contain the name of the district court in which it is filed."

Sec. 4. Article 18 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-191.1. Recording of proceeding in which defendant pleads guilty or no contest to felony in district court.

The trial judge shall require that a true, complete, and accurate record be made of the proceeding in which a defendant pleads guilty or no contest to a Class H or I felony pursuant to G.S. 7A-272."

Sec. 5. G.S. 15A-1011(c) reads as rewritten:

"(c) Upon entry of a plea of guilty or no contest or after conviction on a plea of not guilty, the defendant may request permission to enter a plea of guilty or no contest as to other crimes with which he is charged in the same or another prosecutorial district as defined in G.S. 7A-60. A defendant may not enter any plea to crimes charged in another prosecutorial district as defined in G.S. 7A-60 unless the district attorney of that district consents in writing to the entry of such plea. The prosecutor or his representative may appear in person or by filing an affidavit as to the nature of the evidence gathered as to these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or information, even though the case may otherwise be within the exclusive original jurisdiction of the district court. A district court may accept pleas under this section only in cases within the original jurisdiction of the district court, court and in cases within the concurrent jurisdiction of the district and superior courts pursuant to G.S. 7A-272(c)."

Sec. 6. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 58A.

"Procedures Relating to Felony Guilty Pleas in District Court.

"§ 15A-1029.1. Transfer of case from superior court to district court to accept guilty and no contest pleas for certain felony offenses.

(a) With the consent of both the prosecutor and the defendant, the presiding superior court judge may order a transfer of the defendant's case to the district court for the purpose of allowing the defendant to enter a plea of guilty or no contest to a Class H or I felony.

(b) The provisions of Article 58 of this Chapter apply to a case transferred under this section from superior court to district court in the same manner as if the plea were entered in superior court. Appeals that are authorized in these matters are to the appellate division."

PART 2. ARRAIGNMENT ON WRITTEN REQUEST; ENTRY OF NOT GUILTY PLEA

Sec. 7. G.S. 15A-941 reads as rewritten:

"§ 15A-941. Arraignment before ~~judge~~ judge only upon written request; use of two-way audio and video ~~transmission~~ transmission; entry of not guilty plea if not arraigned.

(a) Arraignment consists of bringing a defendant in open court or as provided in subsection (b) of this section before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The prosecutor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

(b) An arraignment in a noncapital case may be conducted by an audio and video transmission between the judge and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for the judicial district or set of districts and approved by the Administrative Office of the Courts.

(d) A defendant will be arraigned in accordance with this section only if the defendant files a written request with the clerk of superior court for an arraignment not later than 21 days after service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant.

(e) Nothing in this section shall prevent the district attorney from calendaring cases for administrative purposes."

Sec. 8. G.S. 15A-942 reads as rewritten:

"§ 15A-942. Right to counsel.

If the defendant appears at the arraignment without counsel, the court must inform the defendant of his right to counsel, must accord the defendant opportunity to exercise that right, and must take any action necessary to effectuate the right. If the defendant does not file a written request for arraignment, the court, in addition to entering a plea of not guilty on behalf of the defendant, shall also verify that the defendant is aware of the right to counsel, that the defendant has been given the opportunity to exercise that right, and must take any action necessary to effectuate that right on behalf of the defendant."

Sec. 9. G.S. 15A-952(c) reads as rewritten:

"(c) Unless otherwise provided, the motions listed in subsection (b) must be made at or before the time of arraignment if a written request is filed for

arraignment and if arraignment is held prior to the session of court for which the trial is calendared. If arraignment is to be held at the session for which trial is calendared, the motions must be filed on or before five o'clock P.M. on the Wednesday prior to the session when trial of the case begins.

If a written request for arraignment is not filed, then any motion listed in subsection (b) of this section must be filed not later than 21 days from the date of the return of the bill of indictment as a true bill."

Sec. 10. G.S. 15A-1221(a) reads as rewritten:

"(a) The order of a jury trial, in general, is as follows:

- (1) ~~The defendant must be arraigned and must have his plea recorded, out of the presence of the prospective jurors, unless he has waived arraignment under G.S. 15A-945.~~
- (1a) Unless the defendant has filed a written request for an arraignment, the court must enter a not guilty plea on behalf of the defendant in accordance with G.S. 15A-941. If a defendant does file a written request for an arraignment, then the defendant must be arraigned and must have his or her plea recorded out of the presence of the prospective jurors in accordance with G.S. 15A-941.
- (2) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213.
- (3) The jury must be sworn, selected and impaneled in accordance with Article 72, Selecting and Impaneling the Jury.
- (4) Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement.
- (5) The State must offer evidence.
- (6) The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement.
- (7) The State and the defendant may then offer successive rebuttals as provided in G.S. 15A-1226.
- (8) At the conclusion of the evidence, the parties may make arguments to the jury in accordance with the provisions of G.S. 15A-1230.
- (9) The judge must deliver a charge to the jury in accordance with the provisions of G.S. 15A-1231 and 15A-1232.
- (10) The jury must retire to deliberate, and alternate jurors who have not been seated must be excused as provided in G.S. 15A-1215."

PART 3. EFFECTIVE DATE

Sec. 11. This act becomes effective December 1, 1996, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 534

CHAPTER 726

AN ACT TO AMEND THE LAW REGULATING SURETY BONDSMEN, BAIL BONDSMEN, AND RUNNERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-71-1(11) reads as rewritten:

"(11) 'Surety bondsman' ~~shall mean~~ means any person who is approved by and licensed by the Commissioner as an insurance agent pursuant to the provisions of Articles 1 through 64 of this Chapter and a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised money or other things of value therefor, consideration for doing so."

Sec. 2. G. S. 58-71-40 reads as rewritten:

"§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; ~~only individuals to be licensed~~; license applications generally.

(a) No person shall act in the capacity of a bail bondsman or runner or perform any of the functions, duties, or powers prescribed for bail bondsmen or runners under the provisions of this Article unless that person shall be qualified and (except as regards an accommodation bondsman) licensed in accordance with the provisions of this Article. No license shall be issued to a professional bondsman or runner except ~~as provided in this Article and none shall be issued except~~ to an individual natural person.

(b) The applicant shall apply for a license or renewal thereof on forms prepared and supplied by the Commissioner and the Commissioner may propound any reasonable interrogatories to an applicant for a license under this Article ~~or on any renewal thereof~~, relating to his the applicant's qualifications, residence, prospective place of business, and any other matters which, in the opinion of the Commissioner, are deemed necessary in order to protect the public and ascertain the qualifications of the applicant. The Commissioner may also conduct any reasonable inquiry or investigation ~~he sees fit~~, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed.

(c) ~~The failure of the applicant to secure approval of the Commissioner shall not preclude him from applying as many times as he desires, but no application shall be considered by~~ A person whose application is denied may reapply, but the Commissioner within one year subsequent to the date upon which the Commissioner denied the last application, may not consider more than one application submitted by the same person within any one-year period.

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license is terminated must surrender the identification card to the Commissioner within 10 working days of the termination."

Sec. 3. G.S. 58-71-45 reads as rewritten:

"§ 58-71-45. ~~Expiration~~ Terms of licenses.

All licenses issued pursuant to the provisions of this Article shall expire annually on June 30 unless revoked or suspended prior thereto by the Commissioner, or upon notice served upon the Commissioner that the employer of any runner has canceled the licensee's authority to act for such employer. A license issued to a bail bondsman or to a runner authorizes the

licensee to act in that capacity until the license is suspended or revoked. Upon the suspension or revocation of a license, the licensee shall return the license to the Commissioner. A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable renewal fee under G.S. 58-71-75. The Commissioner is not required to print renewal licenses. After notifying the Commissioner in writing, a professional bondsman who employs a runner may cancel the runner's license and the runner's authority to act for the professional bondsman."

Sec. 4. G.S. 58-71-50 reads as rewritten:

"§ 58-71-50. *Qualification for professional bail bondsmen and runners.*

(a) ~~Before license can issue to an~~ An applicant permitting him to act as a professional for a license as a bail bondsman or runner, ~~he~~ must furnish the Commissioner a complete set of ~~his~~ the applicant's fingerprints and a recent passport size full-face photograph of ~~himself, the applicant.~~ himself, the applicant. The applicant's fingerprints shall be certified by an authorized law-enforcement officer. The fingerprints of every applicant shall be forwarded to the State Bureau of Investigation for a search of the applicant's criminal history record file, if any. If warranted, the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. An applicant shall pay the cost of the State and any national criminal history record check of the applicant.

(b) Every applicant for a license under this Article as a professional bail bondsman or runner before being issued such license shall satisfy the Commissioner that he: must meet all of the following qualifications:

- (1) ~~Is Be~~ Be 18 years of age or ~~over;~~ over.
- (2) ~~Is Be~~ Be a resident of this ~~State;~~ State.
- (3) ~~Is Be~~ Be a person of good moral character and ~~has not not have been~~ convicted of a felony or any crime involving moral ~~turpitude;~~ turpitude.
- (4) ~~Has Have~~ Have knowledge, training, or experience of sufficient duration and extent to ~~reasonably satisfy the Commissioner that he possesses~~ provide the competence necessary to fulfill the responsibilities of a ~~licensee;~~ licensee.
- (5) ~~Has Have~~ Have no outstanding bail bond ~~obligations;~~ obligations.
- (6) ~~Is not or has not been in violation~~ Have no current or prior violations of any provision of this Article or of Article 26 of Chapter 15A of the General Statutes or of any similar provision of law of any other ~~state;~~ state.
- (7) ~~Has not~~ Not have been in any manner disqualified under the laws of this State or any other state to engage in the bail bond business."

Sec. 5. G.S. 58-71-55 reads as rewritten:

"§ 58-71-55. *License fees.*

A nonrefundable license fee of one hundred dollars (\$100.00) shall be paid to the Commissioner with each application for license as a ~~professional~~ bail bondsman and a license fee of sixty dollars (\$60.00) shall be paid to the Commissioner with each application for license as a runner."

Sec. 6. G.S. 58-71-60 is repealed.

Sec. 7. G.S. 58-71-65 reads as rewritten:

"§ 58-71-65. Contents of application for runner's license; endorsement by bail professional bondsman.

In addition to the other requirements of this Article, an applicant for a license to be a runner must affirmatively show:

- (1) That the applicant will be employed by only one ~~bail bondsman~~ professional bondsman, who will supervise the work of the applicant and be responsible for the runner's conduct in the bail ~~bond business; and business.~~
- (2) That the application is endorsed by the appointing ~~bail bondsman~~ professional bondsman, who ~~shall obligate himself therein~~ must agree in the application to supervise the runner's activities.
- (3) ~~That Whether or not the applicant has disclosed whether he has ever been licensed as a professional bail bondsman or runner. If the An applicant who has ever been licensed as a professional bondsman, he shall~~ Whether or not the applicant has disclosed whether he has ever been licensed as a professional bondsman or runner. If the An applicant who has ever been licensed as a professional bondsman, he shall bail bondsman must list all outstanding bail bond obligations. If the An applicant who has ever been licensed as a runner, he shall runner must list all prior employment as such, indicating the name of each bail supervising professional bondsman by whom he has been employed and the reason or reasons for the termination of the employment."

Sec. 8. G.S. 58-71-70 reads as rewritten:

"§ 58-71-70. Examination; fees.

~~Except as hereinafter provided, an Each applicant for a license to be as a professional bondsman bondsman, surety bondsman, or runner shall be required to appear in person and take a written examination prepared by the Commissioner testing his the applicant's ability and qualifications. Each applicant shall become is eligible for examination 30 days after the date the application is received by the Commissioner. Examinations Each examination shall be held at such a time and place as designated by the Commissioner, and the Commissioner. Each applicant shall be given notice of such the designated time and place not less no sooner than 15 days prior to taking before the examination. The Commissioner may contract with a person to process applications for the examination and administer and grade the examination in the same manner as for agent examinations under Article 33 of this Chapter.~~

~~The fee for such each examination shall be is twenty-five dollars (\$25.00) for professional bondsmen and twenty-five dollars (\$25.00) for runners. (\$25.00) plus an amount that offsets the cost of any contract for examination services. These This examination fees are fee is nonrefundable. The failure of an applicant to pass an examination shall not preclude him from taking subsequent examinations; provided, however, that~~

An applicant who fails an examination may take a subsequent examination, but at least one year must intervene between examinations."

Sec. 9. G.S. 58-71-71(d) reads as rewritten:

"(d) The Commissioner shall approve the educational Educational courses offered under this section and ensure that they must be approved by the Commissioner before they may be offered. Before approving a course, the Commissioner must be satisfied that it will enhance the professional

competence and professional responsibility of bail bondsmen and runners. No person shall offer, sponsor, or conduct any course under ~~the auspices of~~ this section unless the Commissioner has authorized that person to do so."

Sec. 10. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-71-72. Qualifications of instructors.

(a) A person who provides, presents, or instructs a prelicensing course or continuing education course under G.S. 58-71-71 must have a certificate of authority issued by the Commissioner. The Commissioner may establish requirements for the issuance or renewal of a certificate of authority and grounds for the summary suspension or termination of a certificate of authority.

(b) The Commissioner may summarily suspend or terminate a certificate of authority to provide, present, or instruct a course if the Commissioner finds that the course is inaccurate or it received a poor evaluation from both a Department monitor and a majority of those who attended the course and responded to a Department questionnaire about the course."

Sec. 11. G.S. 58-71-75 reads as rewritten:

"§ 58-71-75. Renewal of licenses; fees.

A renewal license shall be issued by the Commissioner to a licensee who has continuously maintained his license in effect without further examination upon the payment of a renewal fee of sixty dollars (\$60.00) in case of runners and one hundred dollars (\$100.00) in case of professional bondsmen, but such licensees shall in all other respects be required to comply with and be subject to the provisions of this Article. The renewal fee for a runner's license is sixty dollars (\$60.00). The renewal fee for a bail bondsman's license is one hundred dollars (\$100.00). After the receipt of such licensee's application for renewal, the current license shall continue. A renewed license continues in effect until the renewal license is issued or denied suspended or revoked for cause."

Sec. 12. G.S. 58-71-81 reads as rewritten:

"§ 58-71-81. Notice of receivership.

Upon the filing for protection under the United States Bankruptcy Code or any state receivership law by any professional bail bondsman licensed under this Article or by any bail bond business in which the bondsman holds a position of management or ownership, the bondsman shall notify the Commissioner of the filing for protection within three business days after the filing. Upon the appointment of a receiver by a State or federal court for any professional bondsman licensed under this Article, or for any bail bond business in which the bondsman holds a position of management or ownership, the bondsman shall notify the Commissioner of the filing for protection within three business days after the filing. The failure to notify the Commissioner within three business days after the filing for bankruptcy protection shall, after hearing, cause the license of any person failing to make the required notification to be suspended for a period of not less than 60 days nor more than three years, in the discretion of the Commissioner."

Sec. 13. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-71-82. Other licenses issued by the Commissioner.

If licenses are issued to a bail bondsman or runner under this Article and under Article 33 of this Chapter and the license issued under Article 33 of this Chapter is suspended or revoked for cause or is not renewed, the license issued under this Article is suspended, revoked, or not renewed as of the date the order under Article 33 of this Chapter is final."

Sec. 14. G.S. 58-33-25 is amended by adding a new subsection to read:

"(e1) If a license is issued to a bail bondsman or a runner under this Article and under Article 71 of this Chapter and the license issued under Article 71 of this Chapter is suspended or revoked for cause or is not renewed for failure to pay the renewal fee, the license issued under this Article is suspended, revoked, or not renewed as of the date the order under Article 71 of this Chapter is final."

Sec. 15. G.S. 58-71-82, as enacted by Section 11 of this act, reads as rewritten:

"§ 58-71-82. ~~Other licenses issued by the Commissioner.~~ Dual license holding.

~~If licenses are issued to a bail bondsman or runner under this Article and under Article 33 of this Chapter and the license issued under Article 33 of this Chapter is suspended or revoked for cause or is not renewed, the license issued under this Article is suspended, revoked, or not renewed as of the date the order under Article 33 of this Chapter is final.~~ If an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered one license for the purpose of suspension, revocation, or renewal under this Article. Separate renewal fees must be paid for each license, however."

Sec. 16. G.S. 58-71-95 reads as rewritten:

"§ 58-71-95. Prohibited practices.

No bail bondsman or runner shall:

- (1) Pay a fee or rebate or give or promise anything of value, directly or indirectly, to a jailer, law-enforcement officer, committing magistrate, or any other person who has power to arrest or hold in custody, or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof, including the payment to law-enforcement officers, directly or indirectly, for the arrest or apprehension of a principal or principals who have caused or will cause a forfeiture.
- (2) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.
- (3) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.
- (4) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety, nor suggest or advise the employment of, or name for employment any particular attorney to represent his principal.
- (5) Accept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond; provided that

the bondsman shall be permitted to accept collateral security or other indemnity from a principal or from anyone on behalf of a principal. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond and shall be returned upon final termination of liability on the bond.

- (6) Solicit business in any of the courts or on the premises of any of the courts of this State, in the office of any magistrate and in or about any place where prisoners are confined. Loitering in or about a magistrate's office or any place where prisoners are confined shall be prima facie evidence of soliciting.
- (7) Advise or assist the principal for the purpose of forfeiting bond.
- (8) Impersonate a law-enforcement officer.
- (9) Falsely represent that the bail bondsman or runner is in any way connected with an agency of the federal government or of a state or local government.

Sec. 17. G.S. 58-71-105 reads as rewritten:

"§ 58-71-105. *Persons prohibited from becoming surety or runners.*

No sheriff, deputy sheriff, other law-enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of the General Court of Justice, nor other public employee assigned to duties relating to the administration of criminal justice, nor the spouse of any such person, may in any case become surety on a bail bond for any person. In addition, no person covered by this section may act as an agent for any bonding company or ~~professional~~ bail bondsman. No such person may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal business is acting as a bail bondsman. However, nothing in this section prohibits any such person from being surety upon the bond of his or her spouse, parent, brother, sister, child, or descendant."

Sec. 18. G.S. 58-71-115 reads as rewritten:

"§ 58-71-115. *Insurers to annually report surety bondsmen; notices of appointments and terminations; information confidential.*

~~Every~~ Before July 1 of each year, every insurer shall ~~annually prior to July 1,~~ furnish the Commissioner a list of all surety bondsmen appointed by ~~the insurer~~ to write bail bonds on its the insurer's behalf. ~~Every such~~ An insurer who ~~subsequently~~ appoints a surety bondsman in the State ~~shall give notice thereof to the Commissioner,~~ on or after July 1 of each year must notify the Commissioner of the appointment. ~~All such appointments shall be~~ are subject to the issuance of the proper insurance agent's license to the ~~appointee,~~ appointee under this Article.

An insurer terminating the appointment of a surety bondsman shall file a written notice ~~thereof~~ of the termination with the Commissioner, together with a statement that ~~the insurer~~ the insurer has given or mailed notice to the surety bondsman and to the clerk of superior court of any county in the State ~~wherein such~~ in which the insurer has been obligated on bail bonds through ~~said agent~~ the surety bondsman within the past three years. ~~Such notice filed with the Commissioner~~ The notice to the Commissioner shall state the reasons, if any, for such the termination. Information ~~so~~ furnished in the

notice to the Commissioner shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives."

Sec. 19. G.S. 58-71-140 reads as rewritten:

"§ 58-71-140. *Registration of licenses and power of appointments by insurers.*

(a) No professional bail bondsman shall become a surety on an undertaking unless he or she has registered his or her current license in the office of the clerk of superior court in the county in which he or she resides and a certified copy of the same with the clerk of superior court in any other county in which he or she shall write bail bonds.

(b) A surety bondsman shall ~~also annually register a certified copy of his or her current surety bondsman's license and a certified copy of his or her power of appointment with the clerk of superior court wherein in the county in which he the surety bondsman resides and with the clerk of superior court in any other county wherein he shall write in which the surety bondsman writes bail bonds on behalf of an insurer.~~

(c) No runner shall become surety on an undertaking on behalf of a professional bondsman unless that runner has registered his or her current license and a certified copy of his or her power of attorney in the office of the clerk of superior court in the county in which the runner resides and with the clerk of superior court in any other county in which the runner writes bail bonds on behalf of the professional bondsman."

Sec. 20. G.S. 58-33-25(e)(9) is repealed.

Sec. 21. All surety bondsmen holding licenses issued under G.S. 58-33-25(e)(9) shall be issued surety bondsmen licenses under Article 71 of Chapter 58 of the General Statutes.

Sec. 22. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Sec. 23. Sections 6 and 16 of this act become effective October 1, 1996. Sections 1 through 5, 7 through 12, 15, and 17 through 21 of this act become effective January 1, 1997. The remaining sections of this act are effective upon ratification. Section 14 of this act expires January 1, 1997.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 879

CHAPTER 727

AN ACT TO AMEND THE STATE'S GUN LAWS TO ESTABLISH STATEWIDE UNIFORM REGULATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C. "Firearm Regulation.

"§ 14-409.39. Definitions.

The following definitions apply in this Article:

- (1) Dealer. -- Any person licensed as a dealer pursuant to 18 U.S.C. § 921, et seq., or G.S. 105-80.
- (2) Firearm. -- A handgun, shotgun, or rifle which expels a projectile by action of an explosion.
- (3) Handgun. -- A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

"§ 14-409.40. Statewide uniformity of local regulation.

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(b) Unless otherwise permitted by statute, no county or municipality, by ordinance, resolution, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.

(d) No county or municipality, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, including prohibiting the possession of firearms in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 934

CHAPTER 728

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL CHANGES TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.108(h)(4) reads as rewritten:

"(4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant ~~may take any of the following actions:~~ may:

- a. Take no action, thereby consenting to the continued review of the application; or
- b. Treat the ~~action~~ failure to issue a permit decision as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes, as provided in subdivision (2) of subsection (d) of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1086

CHAPTER 729

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE 1995 WORKERS' COMPENSATION INSURANCE LOSS COSTS RATING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-2-145(c) reads as rewritten:

"(c) Each self-insured employer group must determine its individual member employers' premiums or contributions using the ~~current~~ most recent rates and classifications filed by the North Carolina Rate Bureau and approved by the Commissioner under Article 36 of this Chapter. Deviations from these rates or classifications are permitted only in accordance with Article 36 of this Chapter, except that no deviation is required to be filed with the Rate Bureau.

The Commissioner shall approve a request filed for a deviation to reduce premiums or contributions or provide discounts if the filed request is accompanied by competent, independent financial and actuarial information. Despite the provisions of G.S. 58-36-30(c), a deviation shall not be required to apply uniformly to all classifications. The Commissioner may deny a filed request for a deviation only if he finds, after notice and a public hearing, that the deviation would result in a hazardous financial condition to the group, based on financial, actuarial or other information. The public hearing shall be held within 45 days after the requested deviation is filed in its entirety, and the Commissioner shall give at least 14 days' notice of the hearing to the person filing the request and to other persons designated by the Commissioner. The Commissioner shall make a determination as

expeditiously as reasonably practicable after the conclusion of the hearing, provided that the request shall be deemed approved unless denied within 60 days after it was filed in its entirety.

'Hazardous financial condition', for purposes of this subsection, means that, based on its present or reasonably anticipated financial condition, a group, although not yet financially impaired or insolvent, is unlikely to be able:

- (1) To meet obligations with respect to known claims and reasonably anticipated claims; or
- (2) To pay other obligations in the normal course of business."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1199

CHAPTER 730

AN ACT TO REVISE THE DEFINITION OF NONFLEET MOTOR VEHICLE TO ALLOW FLEXIBILITY FOR THE NUMBER OF AUTOMOBILES THAT MAY BE WRITTEN UNDER A PERSONAL AUTOMOBILE INSURANCE POLICY AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES AND TO PROVIDE THAT THERE ARE NO REINSURANCE FACILITY RECOUPMENT SURCHARGE OR SAFE DRIVER INCENTIVE PLAN SURCHARGES FOR CERTAIN ACCIDENTS OCCURRING DURING RESPONSES TO EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-40-10(2) reads as rewritten:

"(2) 'Nonfleet' motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is:

- a. ~~One of four or fewer motor vehicles owned or hired under a long-term contract by a policy named insured; or~~
- b. ~~One of five or more private passenger motor vehicles owned or hired under a long-term contract:~~
 1. ~~By an individual who is a policy named insured;~~
 2. ~~Jointly by two or more individuals who are policy named insureds and are residents in the same household; or~~
 3. ~~Jointly by two or more individuals who are policy named insureds and are related by blood, marriage, or adoption.~~

is one of four or fewer motor vehicles hired under a long-term contract or owned by the insured named in the policy."

Sec. 2. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-2. Private passenger motor vehicles; number of nonfleet policies.

Notwithstanding the definition of 'nonfleet' in G.S. 58-40-10(2), the Bureau shall adopt rules, subject to the Commissioner's approval, that specify the circumstances under which more than four private passenger

motor vehicles may be covered under a nonfleet private passenger motor vehicle policy that is subject to this Article."

Sec. 3. G.S. 58-36-75(d) reads as rewritten:

"(d) There shall be no Facility recoupment surcharge under G.S. 58-37-40(f) or Safe Driver Incentive Plan surcharges under G.S. 58-36-65 for accidents occurring when only operating a firefighting, rescue squad, or law enforcement vehicle in accordance with G.S. 20-125(b) and in response to an emergency if the operator of the vehicle at the time of the accident was a paid or volunteer member of any fire department, rescue squad, or any law enforcement agency. This exception does not include an accident occurring after the vehicle ceases to be used in response to the emergency and the emergency ceases to exist."

Sec. 4. Sections 1 and 2 of this act become effective January 1, 1997, and apply to policies written on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 955

CHAPTER 731

AN ACT TO INCREASE EDUCATIONAL OPPORTUNITY BY
AUTHORIZING THE CREATION AND FUNDING OF CHARTER
SCHOOLS, WHICH ARE DEREGULATED SCHOOLS UNDER
PUBLIC CONTROL.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the "Charter Schools Act of 1996".

Sec. 2. Article 16 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 6A. Charter Schools.

"§ 115C-238.29A. Purpose.

The purpose of this Part is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to accomplish all of the following:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
- (3) Encourage the use of different and innovative teaching methods;
- (4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
- (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (6) Hold the schools established under this Part accountable for meeting measurable student achievement results, and provide the

schools with a method to change from rule-based to performance-based accountability systems.

"§ 115C-238.29B. Eligible applicants; contents of applications; submission of applications for approval.

(a) Any person, group of persons, or nonprofit corporation seeking to establish a charter school within a local school administrative unit may apply to establish a charter school on behalf of a private nonprofit corporation. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

- (1) A description of a program that implements one or more of the purposes in G.S. 115C-238.29A.
- (2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.
- (3) The governance structure of the school including the process to be followed by the school to ensure parental involvement.
- (4) Admission policies and procedures.
- (5) A proposed budget for the school and evidence that the plan for the school is economically sound.
- (6) Requirements and procedures for program and financial audits.
- (7) A description of how the school will comply with G.S. 115C-238.29F.
- (8) Types and amounts of insurance coverage, including bonding insurance for the principal officers of the school, to be obtained by the charter school.
- (9) The term of the contract.
- (10) The qualifications required for individuals employed by the school.
- (11) The procedures by which students can be excluded from the charter school and returned to a public school. Notwithstanding any law to the contrary, any local board may refuse to admit any student who is suspended or expelled from a charter school due to actions that would lead to suspension or expulsion from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.
- (12) The number of students to be served, which number shall be at least 65, and the minimum number of teachers to be employed at the school, which number shall be at least three. However, the charter school may serve fewer than 65 students or employ fewer than three teachers if the application contains a compelling reason, such as the school would serve a geographically remote and small student population.

- (13) Information regarding the facilities to be used by the school and the manner in which administrative services of the school are to be provided.
- (14) A description of whether the school will operate independently of the local board of education or whether it agrees to be subject to some supervision and control of its administrative operations by the local board of education. In the event the charter school elects to operate independently of the local board of education, the application must specify which employee benefits will be offered to its employees and how the benefits will be funded.
- (c) An applicant shall submit the application to a chartering entity for preliminary approval. A chartering entity may be:
- (1) The local board of education of the local school administrative unit in which the charter school will be located;
 - (2) The board of trustees of a constituent institution of The University of North Carolina, so long as the constituent institution is involved in the planning, operation, or evaluation of the charter school; or
 - (3) The State Board of Education.

Regardless of which chartering entity receives the application for preliminary approval, the State Board of Education shall have final approval of the charter school.

"§ 115C-238.29C. Preliminary approval of applications for charter schools.

(a) The chartering entity that receives a request for preliminary approval of a charter school shall act on each request received prior to November 1 of a calendar year by February 1 of the next calendar year.

(b) The chartering entity shall give preliminary approval to the application if the chartering entity determines that (i) information contained in the application meets the requirements set out in this Part or adopted by the State Board of Education, (ii) the applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner, and (iii) granting the application would improve student learning and would achieve one of the other purposes set out in G.S. 115C-238.29A. In reviewing applications for the establishment of charter schools within a local school administrative unit, the chartering entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure. If the chartering entity approves more than one application for charter schools located in a local school administrative unit, the chartering entity may state its order of preference among the applications that it approves.

(c) If a chartering entity other than the State Board disapproves an application, the applicant may appeal to the State Board of Education prior to February 15. The State Board shall consider the appeal at the same time it is considering final approval in accordance with G.S. 115C-238.29D. The State Board shall give preliminary approval of the application if it finds that the chartering entity acted in an arbitrary or capricious manner in disapproving the application, failed to consider appropriately the application, or failed to act within the time set out in G.S. 115C-238.29C.

If the chartering entity, the State Board of Education, or both, disapprove an application, the applicant may modify the application and reapply subject to the application deadline contained in subsection (a) of this section.

"§ 115C-238.29D. Final approval of applications for charter schools.

(a) The State Board shall grant final approval of an application if it finds that the application meets the requirements set out in this Part or adopted by the State Board of Education and that granting the application would achieve one or more of the purposes set out in G.S. 115C-238.29A. The State Board shall act by March 15 of a calendar year on all applications and appeals it receives prior to February 15 of that calendar year.

(b) The State Board shall authorize no more than five charter schools per year in one local school administrative unit. The State Board shall authorize no more than 100 charter schools statewide. If more than five charter schools in one local school administrative unit or more than 100 schools statewide meet the standards for final approval, the State Board shall give priority to applications that are most likely to further State education policies and to strengthen the educational program offered in the local school administrative units in which they are located.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant a charter for a period not to exceed five years and may renew the charter upon the request of the chartering entity for subsequent periods not to exceed five years each. A material revision of the provisions of a charter application shall be made only upon the approval of the State Board of Education.

"§ 115C-238.29E. Charter school operation.

(a) A charter school that is approved by the State shall be a public school within the local school administrative unit in which it is located. It shall be accountable to the local board of education for purposes of ensuring compliance with applicable laws and the provisions of its charter.

(b) A charter school shall be operated by a private nonprofit corporation that shall have received federal tax-exempt status no later than 24 months following final approval of the application.

(c) A charter school shall operate under a written contract signed by the local board of education and the applicant. The contract shall incorporate at a minimum the information provided in the application, as modified during the charter approval process, and any terms and conditions imposed on the charter school by the State Board of Education.

If the local board of education does not sign the contract, the State Board may sign on behalf of the local board.

(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

(e) A charter school shall be located in the local school administrative unit with which it signed the contract. Its specific location shall not be prescribed or limited by a local board or other authority except a zoning

authority. The school may lease space from a local board of education, from a public or private nonsectarian organization, or as is otherwise lawful in the local school administrative unit in which the charter school is located.

(f) Except as provided in this Part and pursuant to the provisions of its contract, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

"§ 115C-238.29F. General requirements.

(a) Health and Safety Standards. -- A charter school shall meet the same health and safety requirements required of a local school administrative unit.

(b) School Nonsectarian. -- A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition. A charter school shall not be affiliated with a nonpublic sectarian school or a religious institution.

(c) Civil Liability and Insurance. --

(1) The board of directors of a charter school may sue and be sued. The board of directors shall obtain at least the amount of and types of insurance required by the contract.

(2) No civil liability shall attach to any chartering entity, to the State Board of Education, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. In the event a charter school has not elected total independence from the local board of education under subsection (e) of this section, the immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(d) Instructional Program. --

(1) The school shall provide instruction each year for at least 180 days.

(2) The school shall design its programs to at least meet the student performance standards adopted by the State Board of Education and the student performance standards contained in the contract with the local board of education.

(3) A charter school shall conduct the student assessments required for charter schools by the State Board of Education.

(4) The school shall comply with policies adopted by the State Board of Education for charter schools relating to the education of children with special needs.

(5) The school is subject to and shall comply with Article 27 of Chapter 115C of the General Statutes; except that a charter school may also exclude a student from the charter school and return that student to another school in the local school administrative unit in accordance with the terms of its contract.

(e) Employees. --

(1) An employee of a charter school is not an employee of the local school administrative unit in which the charter school is located. The charter school's board of directors shall employ and contract

with necessary teachers to perform the particular service for which they are employed in the school; at least seventy-five percent (75%) of these teachers in grades kindergarten through five, at least fifty percent (50%) of these teachers in grades six through eight, and at least fifty percent (50%) of these teachers in grades nine through 12 shall hold teacher certificates. The board also may employ necessary employees who are not required to hold teacher certificates to perform duties other than teaching and may contract for other services. The board may discharge teachers and noncertificated employees.

- (2) No local board of education shall require any employee of the local school administrative unit to be employed in a charter school.
- (3) If a teacher employed by a local school administrative unit makes a written request for an extended leave of absence to teach at a charter school, the local school administrative unit shall grant the leave. The local school administrative unit shall grant a leave for any number of years requested by the teacher, shall extend the leave for any number of years requested by the teacher, and shall extend the leave at the teacher's request. The local school administrative unit may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. A teacher who has career status under G.S. 115C-325 prior to receiving an extended leave of absence to teach at a charter school may return to a public school in the local school administrative unit with career status at the end of the leave of absence or upon the end of employment at the charter school if an appropriate position is available. If an appropriate position is unavailable, the teacher's name shall be placed on a list of available teachers and that teacher shall have priority on all positions for which that teacher is qualified in accordance with G.S. 115C-325(e)(2).
- (4) In the event a charter school, in its application, elects total independence from the local board of education, its employees shall not be deemed to be employees of the local school administrative unit and shall not be entitled to any State-funded employee benefits, including membership in the North Carolina Teachers' and State Employees' Retirement System or the Teachers' and State Employees' Comprehensive Major Medical Plan. In the event a charter school, in its application, agrees to be subject to some supervision and control of its administrative operations by the local board of education, the employees of the charter school will be deemed employees of the local school administrative unit for purposes of providing certain State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the Teachers' and State Employees' Comprehensive Major Medical Plan. The Board of Trustees of the Teachers' and State Employees' Retirement System, in consultation with the State Board of Education, shall determine the degree of supervision and control necessary to

qualify the employees of the applicant for membership in the Retirement System. In no event shall anything contained in this Part require the North Carolina Teachers' and State Employees' Retirement System to accept employees of a private employer as members or participants of the System.

(f) Accountability. --

- (1) The school is subject to the financial audits, the audit procedures, and the audit requirements adopted by the State Board of Education for charter schools.
- (2) The school shall comply with the reporting requirements established by the State Board of Education in the Uniform Education Reporting System.
- (3) The school shall report at least annually to the chartering entity and the State Board of Education the information required by the chartering entity or the State Board.

(g) Admission Requirements. --

- (1) Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school.
- (2) No local board of education shall require any student enrolled in the local school administrative unit to attend a charter school.
- (3) Admission to a charter school shall not be determined according to the school attendance area in which a student resides, except that any local school administrative unit in which a public school converts to a charter school shall give admission preference to students who reside within the former attendance area of that school.
- (4) Admission to a charter school shall not be determined according to the local school administrative unit in which a student resides, except that the provisions of G.S. 115C-366(d) shall apply to a student who wishes to attend a charter school in a county other than the county in which the student resides.
- (5) A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability. Except as otherwise provided by law or the mission of the school as set out in the contract, the school shall not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry. Within one year after the charter school begins operation, the population of the school shall reasonably reflect the racial and ethnic composition of the general population residing within the local school administrative unit in which the school is located or the racial and ethnic composition of the special population that the school seeks to serve residing within the local school administrative unit in which the school is located. The school shall be subject to any court-ordered desegregation plan in effect for the local school administrative unit.
- (6) The school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity

of a program, class, grade level, or building. In this case, students shall be accepted by lot.

- (7) Notwithstanding any law to the contrary, a charter school may refuse admission to any student who has been expelled or suspended from a public school under G.S. 115C-391 until the period of suspension or expulsion has expired.

(h) Transportation. -- The charter school shall provide transportation for students enrolled at the school who reside in the local school administrative unit in which the school is located. The charter school may provide transportation for students enrolled at the school who reside in different local school administrative units.

(i) Assets. -- Upon dissolution of the charter school or upon the nonrenewal of the charter, all assets of the charter school shall be deemed the property of the local school administrative unit in which the charter school is located.

"§ 115C-238.29G. Causes for nonrenewal or termination.

The State Board of Education, or a chartering entity subject to the approval of the State Board of Education, may terminate or not renew a contract upon any of the following grounds:

- (1) Failure to meet the requirements for student performance contained in the contract;
- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violation of any of the conditions, standards, or procedures set forth in the contract;
- (5) Two-thirds of the faculty and instructional support personnel at the school request that the contract be terminated or not renewed; or
- (6) Other good cause identified.

The State Board of Education shall develop and implement a process to address contractual and other grievances between a charter school and its chartering entity during the time of its charter.

"§ 115C-238.29H. State and local funds for a charter school.

(a) The State Board of Education shall allocate to each charter school (i) an amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school except for the allocation for children with special needs and (ii) an additional amount for each child attending the charter school who is a child with special needs.

Funds allocated by the State Board of Education shall not be used to purchase land or buildings. The school may own land and buildings it obtained through non-State sources.

(b) If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year.

"§ 115C-238.29I. Notice of the charter school process; review of charter schools; Charter School Advisory Committee.

(a) The State Board of Education shall distribute information announcing the availability of the charter school process described in this Part to each local school administrative unit and public postsecondary educational institution and, through press releases, to each major newspaper in the State.

(b) The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee and the Joint Legislative Commission on Governmental Operations the following information:

- (1) The current and projected impact of charter schools on the delivery of services by the public schools;
- (2) Student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation; and
- (3) Best practices resulting from charter school operations.

The State Board of Education shall base its report in part upon the annual reports submitted by the charter schools under G.S. 115C-238.29F(f)(3). To the extent possible, the State Board of Education shall present the information in disaggregated form relative to the race, gender, grade level, and economic condition of the students.

(c) The State Board of Education shall review the educational effectiveness of the charter school approach authorized under this Part and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located and, not later than January 1, 1999, shall report to the Joint Legislative Education Oversight Committee with recommendations to modify, expand, or terminate that approach. Analysis of the reports submitted under subsection (b) of this section shall be the predominant factor in determining whether the number of charter schools shall be increased and the conditions under which any increase or continued operation shall be allowed. If the analysis indicates demonstrable, substantial success, the General Assembly shall consider expanding the number of charter schools that may be established.

(d) The State Board of Education may establish a Charter School Advisory Committee to assist with the implementation of this Part. The Charter School Advisory Committee may (i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a contract, (v) make recommendations concerning grievances between a charter school and its chartering entity, (vi) assist with the review under subsection (c) of this section, and (vii) provide any other assistance as may be required by the State Board.

"§ 115C-238.29J. Public and private assistance to charter schools.

(a) Local boards of education are authorized and encouraged to provide administrative and evaluative support to charter schools located within their local school administrative units and to contract with those charter schools to provide student transportation.

(b) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(c) The State Board of Education shall direct the Department of Public Instruction to provide guidance and technical assistance, upon request, to applicants and potential applicants for charters."

Sec. 3. G.S. 135-40.1(6) reads as rewritten:

"(6) Employing Unit. -- A North Carolina School System; Community College; State Department, Agency or Institution; Administrative Office of the Courts; or Association or Examining Board whose employees are eligible for membership in a State-Supported Retirement System. An employing unit also shall mean a charter school in accordance with Part 6A of Chapter 115C of the General Statutes whose employees are deemed to be public employees and members of a State-Supported Retirement System."

Sec. 4. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act. In addition, all charters granted and all contracts entered into under this act are subject to any future appropriations and subsequent legislative changes.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1098

CHAPTER 732

AN ACT TO PROVIDE THAT CUMBERLAND COUNTY AND THE CITIES LOCATED IN THAT COUNTY MAY REQUIRE ISSUANCE OF A BUILDING PERMIT FOR THE REPLACEMENT AND DISPOSAL OF ROOFING.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 381 of the 1993 Session Laws, as amended by Chapter 124 of the 1995 Session Laws, reads as rewritten:

"Sec. 3. This act applies only to ~~Alamance and~~ Alamance, Cumberland, and Scotland Counties and the cities located in those counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1181

CHAPTER 733

AN ACT TO GRANT AUTHORITY TO THE CITY OF LUMBERTON TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

- a. ~~In a municipality located in counties which have a population in excess of 163,000 by the last federal census,~~ other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;
- b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census."

Sec. 2. This act applies to the City of Lumberton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1203

CHAPTER 734

AN ACT TO ALLOW THE APPOINTMENT IN CERTAIN CIRCUMSTANCES OF PRECINCT OFFICIALS, OBSERVERS, AND BALLOT COUNTERS FOR A PRECINCT WHO ARE NOT REGISTERED TO VOTE IN THAT PRECINCT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-41(a) reads as rewritten:

"(a) Appointment of Chief Judge and Judges. -- At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and ~~qualified~~, qualified, except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the ~~precinct for which appointed~~, county in which the precinct is located, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the chief judge.

The term 'precinct official' shall mean chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If the recommendations of the party chairs for chief judge or judge in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as chief judge or judge in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of officials for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct, provided that where possible the county board shall seek and adopt the recommendation of the county chairman of the political party affected. In making its appointments, the county board shall assure, wherever possible, that no precinct has a chief judge and judges all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the three positions of chief judge and judge in a precinct.

If, at any time other than on the day of a primary or election, a chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a

vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. 163-82.24, each chief judge and judge of election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

'I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as chief judge of (judge of election in) precinct, County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God.'

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words 'chief judge of' the words 'assistant in' or 'judge of election in' whichever is appropriate."

Sec. 2. G.S. 163-42 reads as rewritten:

"§ 163-42. *Assistants at polls; appointment; term of office; qualifications; oath of office.*

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified

voters of the ~~precinct for which appointed~~, county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within a ~~precinct~~, the county.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the

county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Sec. 3. G.S. 163-43 reads as rewritten:

"§ 163-43. *Ballot counters; appointment; qualifications; oath of office.*

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of ~~that precinct.~~ the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

'I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in precinct, County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God.'

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election."

Sec. 4. G.S. 163-87 reads as rewritten:

"§ 163-87. *Challenges allowed on day of primary or election.*

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c), or
- (2) That the person has already voted in that primary or election, or
- (3) That the person presenting himself to vote is not who he represents himself to be.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

Sec. 4.1. G.S. 163-45 reads as rewritten:

"§ 163-45. *Observers; appointment.*

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, ~~he or his~~ the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct county for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in

writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the chief judge for each affected precinct. He shall retain the other copy. The chairman, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an 'authorization to vote document' instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart."

Sec. 5. G.S. 163-226(a) reads as rewritten:

"(a) **Who May Vote Absentee Ballot; Generally.** -- Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

- (1) ~~He~~ The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which he desires to vote; or
- (2) ~~He~~ The voter is unable to be present at the voting place to vote in person on the day of the specified election in which he desires to vote because of his sickness or other physical disability; or
- (3) ~~He~~ The voter is incarcerated, whether in his county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of his residence in any election, specified herein, in which he otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification

shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;

- (4) ~~He~~ The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and his the voter's assigned duties on the day of the election will cause him the voter to be unable to be present at the voting place to vote in person and provided such employee has his the application witnessed by the chairman of the county board of elections."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1211

CHAPTER 735

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF KILL DEVIL HILLS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Kill Devil Hills is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF KILL DEVIL HILLS.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. Incorporation. The Town of Kill Devil Hills, North Carolina, in Dare County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Kill Devil Hills', hereinafter at times referred to as the 'Town'.

"Sec. 1.2. Powers. The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Kill Devil Hills specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. Corporate Limits. The corporate limits of the Town of Kill Devil Hills are those existing on the date this Charter is ratified, as set forth on the official map of the Town, and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits or wards pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the offices of the Secretary of State, the Dare County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. Town Governing Body; Composition. The Mayor and the Board of Commissioners shall be the governing body of the Town.

"Sec. 2.2. Board of Commissioners; Composition; Terms of Office. The Board of Commissioners shall be composed of four members. Two

commissioners shall be elected by the qualified voters of the entire town in 1997 and biennially thereafter for four-year terms and until their successors are elected and qualified.

"Sec. 2.3. Mayor; Term of Office. The Mayor shall be elected by the qualified voters of the entire town for a term of two years or until a successor is elected and qualified.

"Sec. 2.4. Compensation of the Mayor and Board of Commissioners. The Mayor and Board of Commissioners shall be justly compensated for their services in an amount determined by the Board of Commissioners in accordance with G.S. 160A-64.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. Regular Municipal Elections. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292. Elections in the Town shall be conducted by the Dare County Board of Elections in accordance with Subchapter IX of Chapter 163 of the General Statutes.

"ARTICLE IV. TOWN MANAGER.

"Sec. 4.1. Form of Government. The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes, as provided by G.S. 160A-147.

"Sec. 4.2. Office of the Town Manager created. (a) The Board of Commissioners shall appoint a Town Manager, who shall serve at the pleasure of the Board. The Manager shall be chosen on the basis of executive and administrative qualifications, with special reference to actual experience in or knowledge of accepted practice with respect to the duties of a Town Manager. At the time of appointment, the Manager need not be a resident of the Town or State, but during his or her tenure of office shall reside within the Town. The Manager shall receive such compensation as the Board may establish.

(b) The Town Manager shall be administrative head of the Town government and shall be responsible to the Board of Commissioners for the proper administration of all affairs of the Town. Except as otherwise provided by this Charter, the Town Manager shall have all powers and duties assigned or delegated to a Town Manager by State law. The Town Manager shall appoint and may remove all Town employees except the Town Attorney and shall also perform such other duties as are prescribed by the Board.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 5.1. Town Attorney. There shall be a Town Attorney who shall serve as legal counsel to the Board of Commissioners under G.S. 160A-173.

"Sec. 5.2. Town Clerk. There shall be a Town Clerk who shall be hired and supervised by the Town Manager. Except as otherwise provided by this Charter, the Town Clerk shall perform all duties assigned or delegated to a Town Clerk under G.S. 160A-172 or other State law and shall also perform such other duties as may be prescribed.

"ARTICLE VI. STREET IMPROVEMENTS AUTHORIZATION.

"Sec. 6.1. Street Improvements Authorization. The Town, as authorized by G.S. 160A-296(a)(3) and G.S. 160A-301(a) is fully

authorized to improve its street rights-of-way by purchase, or by dedication of said right-of-way."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Kill Devil Hills and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. (a) The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 220 of the Session Laws of 1953

Chapter 396 of the Session Laws of 1959

Chapters 298 and 605 of the Session Laws of 1961

Chapters 287 and 316 of the Session Laws of 1979

Chapters 296 and 1146 of the Session Laws of 1981.

(b) The following acts are not repealed by this act:

Chapter 1026 of the Session Laws of 1983

Chapters 389 and 536 of the Session Laws of 1985

Chapters 187, 258, 911, 986, 987, and 988 of the Session Laws of 1987

Chapter 469 of the Session Laws of 1989

Chapter 625 of the Session Laws of 1993

Chapter 84 of the Session Laws of 1995.

Sec. 5. The Mayor and Board of Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Kill Devil Hills not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1366

CHAPTER 736

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF WASHINGTON.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Washington is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF WASHINGTON.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. *Incorporation.* The City of Washington, North Carolina, in Beaufort County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Washington', hereinafter at times referred to as the 'City'.

"Sec. 1.2. *Powers.* The City shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Washington specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Boundaries.* The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time in accordance with law. An official map of the City, showing the current municipal boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Beaufort County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *City Governing Body; Composition.* The Mayor and the City Council shall be the governing body of the City.

"Sec. 2.2. *City Council; Composition; Terms of Office.* The Council shall be composed of five members to be elected by all the qualified voters of the City for terms of two years, or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor shall be elected by all the qualified voters of the City for a term of two years or until his or her successor is elected and qualified. The Mayor shall be the official head of the City government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Sec. 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during

the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity until the organizational meeting following the next regular municipal election, despite the contrary provisions of G.S. 160A-70.

"Sec. 2.5. *Meetings.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Quorum; Voting Requirements.* Notwithstanding the contrary provisions of G.S. 160A-74, a majority of the members elected to the Council shall constitute a quorum for the conduct of business. Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75.

"Sec. 2.7. *Qualifications for Office; Compensation; Vacancies.* The qualifications and compensation of the Mayor and Council members shall be in accordance with general law. Vacancies shall be filled as provided in G.S. 160A-63.

"Sec. 2.8. *Prohibition on Holding Other City Positions.* Neither the Mayor nor any members of the Council shall hold any other office or position of trust, profit, or honor under the City government.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Election of Mayor.* A Mayor shall be elected in each regular municipal election.

"Sec. 3.3. *Election of Council Members.* Five council members shall be elected in each regular municipal election.

"Sec. 3.4. *Special Elections and Referenda.* Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

Sec. 4.1. *Form of Government.* The City shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *City Manager; Appointment; Powers and Duties.* The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Sec. 4.3. *Manager's Personnel Authority; Role of Elected Officials.* As chief administrator, the City Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the City, with the exception of the City Attorney and the City Clerk, and any other official whose appointment or removal is specifically vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or

removal of department heads and employees in the administrative service of the City, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the City Attorney, the Council and its members shall deal with the administrative service solely through the City Manager, Acting Manager, or Interim Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the City Manager, Acting Manager, or Interim Manager, either publicly or privately.

"Sec. 4.4. *City Attorney.* The City Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties required by law or as the Council may direct.

"Sec. 4.5. *City Clerk.* The City Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Council may direct.

"Sec. 4.6. *Finance Director.* The City Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Manager.

"Sec. 4.7. *Other Administrative Officers and Employees.* The Council may authorize other positions to be filled by appointment by the City Manager, and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. STREET IMPROVEMENTS.

"Sec. 5.1. *Assessments for Street Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the Council may, without the necessity of a petition, order street improvements and assess the costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon the following findings of fact:

- (1) The street improvement project does not exceed twelve hundred (1,200) linear feet; and
- (2) a. The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard, and it is in the public interest to make such improvement; or
- b. It is in the public interest to connect two streets, or portions of a street already improved; or
- c. It is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the City's thoroughfare or major street plan for the particular street or part thereof.

"Sec. 5.2. *Street Improvement Defined.* For the purposes of this Article, the term 'street improvement' shall include grading, regrading, surfacing,

resurfacing, widening, paving, repaving, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

"Sec. 5.3. *Procedure; Effect of Assessment.* In ordering street improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"ARTICLE VI. SIDEWALKS.

"Sec. 6.1. *Property Owner's Responsibility.* It shall be the duty of every property owner in the City to keep clean and free of debris, trash, and other obstacles or impediments the sidewalks abutting his or her property.

"Sec. 6.2. *City Cleaning or Repair; Costs Become Lien.* The City Council may by ordinance establish a procedure whereby City forces may remove from any sidewalk any debris, trash, ice, or snow upon failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of such removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VII. REMOVAL OF MOTOR VEHICLES.

"Sec. 7.1. *Liens for Removal of Motor Vehicles.* The Council may establish charges to be made for the cost of removing abandoned motor vehicles from private property. When the City causes the removal of any such vehicle from private property pursuant to an ordinance permitting such removal, and the owner or other person having control of said property fails to pay the cost of the removal within 30 days after it becomes due, the amount of the cost of removal of the vehicle shall become a lien against the real property from which the vehicle was removed; said cost shall be placed upon the City's tax books against the property and may be collected and foreclosed in the same manner as taxes are collected and foreclosed, or by suit, as the City may determine.

"ARTICLE VIII. EXTRATERRITORIAL POWERS.

"Sec. 8.1. *Extraterritorial Jurisdiction.* The City shall have and may exercise all of the powers granted by Article 19 of Chapter 160A of the General Statutes within an extraterritorial area which it shall define. The extraterritorial area may extend up to one and one-half miles outside the corporate limits, or the distance authorized by G.S. 160A-360, whichever is greater.

"ARTICLE IX. RIVER REGULATION.

"Sec. 9.1. *No-Wake Zone During Special Events.* The no-wake speed zone established in the Pamlico River by Section 2 of Chapter 434 of the 1993 Session Laws does not apply during special events as designated by ordinance adopted by the Council or order issued by the City Manager. Any ordinance or order issued pursuant to this section shall designate the duration of the exemption and the territorial area to which the exemption

applies. Any order issued by the City Manager pursuant to this section shall be recorded in the City's ordinance book.

"ARTICLE X. PURCHASING AND CONTRACTS.

"Sec. 10.1. *Conflicts of Interest.* No officer, department head, employee, or board or commission member shall make or participate in the making of any contract with the City in which he or she may be in any manner financially interested, directly or indirectly. Any such person who has such an interest in any proposed contract shall make known that interest and shall refrain from participation in the making of any such contract. The willful concealment of such a financial interest or the willful violation of this section shall constitute malfeasance in office or position, and any violator shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person, firm, or corporation contracting with the City shall render the contract void.

"Sec. 10.2. *Disposal of Surplus Personal Property.* The City may dispose of personal property valued at two thousand dollars (\$2,000) or less for any one item or group of items using the procedures authorized in G.S. 160A-266(c).

"ARTICLE XI. CLAIMS AGAINST THE CITY.

"Sec. 11.1. *Settlement of Claims by City Manager.* The City Manager may settle claims against the City for (i) personal injuries or damages to property when the amount involved does not exceed the amount of the applicable insurance deductible and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (ii) the taking of small portions of private property which are needed for the rounding of corners at street intersections, when the amount involved in any such settlement does not exceed two thousand five hundred dollars (\$2,500) and does not exceed the actual loss sustained. Settlement of a claim by the City Manager pursuant to this section shall constitute a complete release of the City from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident, occasion, or taking complained of. All such releases shall be approved by the City Attorney.

"ARTICLE XII. FINANCE AND TAXATION.

"Sec. 12.1. *Occupancy Tax Authorized.* The City shall be authorized to levy a room occupancy and tourism development tax as specified by Chapter 158, Session Laws of 1991, and any subsequent acts. Sections 2(a) and 2(b) of Chapter 158, Session Laws of 1991, are hereby repealed, and appointments and terms of the City of Washington Tourism Development Authority shall be as specified in Sections 12.2 and 12.3 of this Charter.

"Sec. 12.2. *Tourism Development Authority.* When the Council adopts an ordinance levying a room occupancy tax as authorized by Chapter 158, Session Laws of 1991, it shall also adopt an ordinance creating the City of Washington Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The ordinance shall provide that the Authority shall be composed of seven members to be appointed by the Council. One member shall be a Council member, and the remaining six members shall be persons with a keen interest in tourism in the City of Washington. All members of the Authority

shall serve without compensation. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect its Chair from among the members and create and fill other offices as it wishes. The term of the Chair shall be one year with eligibility for reelection, but no member may serve as Chair for more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Director for the City of Washington shall be the ex officio finance officer of the Authority.

"Sec. 12.3. *Terms of Authority Members.* Members of the Authority shall serve three-year staggered terms. Those members serving on the date of ratification of this Charter shall complete the remainder of their terms and their positions shall be filled as the terms expire.

"ARTICLE XIII. FIREMAN'S SUPPLEMENTAL RETIREMENT FUND.

"Sec. 13.1. *Fireman's Supplemental Retirement Fund.* The Washington Fireman's Supplemental Retirement Fund shall continue as authorized by Chapter 418, Session Laws of 1975, and any subsequent acts. Terms and appointments of trustees shall be in accordance with G.S. 58-84-30. The Secretary of the Board of Trustees of the Supplemental Retirement Fund shall notify the City Clerk of the election or appointment of representatives to the Board of Trustees.

"ARTICLE XIV. MINIMUM HOUSING/ABANDONED BUILDINGS.

"Sec. 14.1. *Buildings Vacated and Closed for One Year.* The City may exercise the authority contained in G.S. 160A-443(5a)."

Sec. 2. The purpose of this act is to revise the Charter of the City of Washington and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 163, Session Laws of 1963, except for Section 4

Chapter 280, Session Laws of 1965

Chapter 808, Session Laws of 1967

Chapter 176, Session Laws of 1971

Chapter 322, Session Laws of 1981, except for Section 2

Chapter 637, Session Laws of 1993.

Sec. 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter, those offices shall be filled as provided in Articles II and II of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the City of Washington not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification. ———

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1394

CHAPTER 737

AN ACT TO ALLOW THE COUNTIES OF GRAHAM AND CHEROKEE TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1(e) reads as rewritten:

"(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Wake, and Watauga Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1417

CHAPTER 738

AN ACT RELATING TO DISCLOSURE OF BUSINESS INTEREST IN GUILFORD COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-236 reads as rewritten:

"§ 14-236. Acting as agent for those furnishing supplies for schools and other State institutions.

If any member of any board of directors, board of managers, board of trustees of any of the educational, charitable, eleemosynary or penal institutions of the State, or any member of any board of education, or any county or district superintendent or examiner of teachers, or any trustee of any school or other institution supported in whole or in part from any of the public funds of the State, or any officer, agent, manager, teacher or employee of such boards, shall have any pecuniary interest, either directly or indirectly, proximately or remotely in supplying any goods, wares or merchandise of any nature or kind whatsoever for any of said institutions or schools; or if any of such officers, agents, managers, teachers or employees of such institution or school or State or county officer shall act as agent for any manufacturer, merchant, dealer, publisher or author for any article of merchandise to be used by any of said institutions or schools; or shall receive, directly or indirectly, any gift, emolument, reward or promise of reward for his influence in recommending or procuring the use of any manufactured article, goods, wares or merchandise of any nature or kind whatsoever by any of such institutions or schools, he shall be forthwith removed from his position in the public service, and shall upon conviction be deemed guilty of a Class 1 misdemeanor.

This section shall not apply to members of any board of education which is subject to and complies with the provisions of G.S. 14-234(d1).

This section does not apply to any member of an elected or appointed board as long as the member of the board who owns an interest in a business:

(1) Fully discloses to the board the interest in the business supplying the goods, wares, or merchandise; and

(2) Abstains from voting on any contract relating to the business."

Sec. 2. G.S. 14-234 is amended by adding a new subsection to read:

"(d2) This section does not apply to any member of an elected or appointed board as long as the member of the board who owns an interest in a business:

(1) Fully discloses to the board the interest in the business supplying the goods, wares, or merchandise; and

(2) Abstains from voting on any contract relating to the business."

Sec. 3. This act applies only to the Guilford County Board of Education.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 859

CHAPTER 739

AN ACT TO AMEND THE MENTAL HEALTH COMMITMENT LAW TO PROVIDE FOR DIVERSION OF POTENTIAL THOMAS S. CLASS MEMBERS TO APPROPRIATE TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-132 reads as rewritten:

"§ 122C-132. *Single portal of entry and exit designation for mental health and substance abuse facilities.*

(a) The public system should provide for a single portal of entry and exit policy for State and area mental health and substance abuse facilities. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101. The single portal of entry and exit policy for State and area mental health and substance abuse facilities does not preclude those individuals who have the resources to pay for the cost of inpatient hospital care without the use of any (i) public funds appropriated to the area authority or (ii) Medicaid funds from selecting a facility for treatment and care which is different from that designated by the area authority in its single portal plan.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. ~~However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes.~~ In order for a single portal plan approved before July 1, 1996, to remain in force, it shall be reviewed by the area authority, show evidence of renewal of the agreements provided for in subdivision (c)(5) below, and be reapproved by the Secretary after July 1, 1996.

(c) The plan shall include but not be limited to:

- (1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
- (2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
- (3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
- (3a) Procedures for treatment of mentally retarded individuals with mental illness who are committed to a 24-hour facility;
- (4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
- (5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
- (6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area who do not have the resources to pay for the cost of inpatient hospital care without the use of any (i) public funds appropriated to the area authority or (ii) Medicaid funds shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy."

Sec. 2. G.S. 122C-201 reads as rewritten:

"§ 122C-201. *Declaration of policy.*

122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266.

(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003, a ~~law-enforcement~~ law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263.

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, he may be accepted for admission in accordance with G.S. 122C-266. The facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to be mentally retarded be admitted to a State psychiatric hospital, except as follows:

- (1) Persons described in G.S. 122C-266(b);
- (2) Persons admitted pursuant to G.S. 15A-1321;
- (3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- (4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed."

Sec. 7. G.S. 122C-262 reads as rewritten:

"§ 122C-262. *Special emergency procedure for individuals needing immediate hospitalization.*

(a) Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to ~~himself~~ self or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible ~~psychologist~~, psychologist in accordance with ~~G.S. 122C-263(a)~~, G.S. 122C-263(c).

(b) If Upon examination by the physician or eligible psychologist, if the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also state the reason that the individual requires immediate hospitalization. If the physician or eligible psychologist knows or has reason to believe that the individual is mentally retarded, the certificate shall so state.

(c) If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 24 ~~hours (excluding hours, excluding Saturday, Sunday and holidays)~~ hours, excluding Sunday, and holidays, of the time that it was signed, the physician or eligible psychologist shall also communicate ~~his~~ the findings to the clerk by telephone.

(d) Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for ~~his~~ care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of ~~his actions~~, this action. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

(1) Persons described in G.S. 122C-266(b);

- (2) Persons admitted pursuant to G.S. 15A-1321;
- (3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- (4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

(e) Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the District Court district court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as for all other respondents under this Part."

Sec. 8. (a) G.S. 122C-263(a) reads as rewritten:

"(a) Without unnecessary delay after assuming custody, the ~~law-enforcement~~ law enforcement officer or the individual designated by the clerk or magistrate under G.S. 122C-251(g) to provide transportation shall take the respondent to an area facility for examination by a physician or eligible psychologist; if a physician or eligible psychologist is not available in the area facility, ~~he~~ the person designated to provide transportation shall take the respondent to any physician or eligible psychologist locally available. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, ~~he~~ the respondent may be detained under appropriate supervision in ~~his~~ the respondent's home, in a private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility."

(b) G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. The examination shall include but is not limited to an assessment of the respondent's:

- (1) Current and previous mental illness ~~or~~ and mental retardation including, if available, previous treatment history;
- (2) Dangerousness to ~~himself,~~ self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;

- (3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and
- (4) Capacity to make an informed decision concerning treatment."
- (c) G.S. 122C-263(d) reads as rewritten:
- "(d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:
 - (1) If the physician or eligible psychologist finds that:
 - a. The respondent is mentally ill;
 - b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;
 - c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration ~~which~~ that would predictably result in dangerousness as defined by G.S. 122C-3(11); and
 - d. ~~His~~ The respondent's current mental status or the nature of ~~his~~ the respondent's illness limits or negates ~~his~~ the respondent's ability to make an informed decision to seek voluntarily or comply with recommended ~~treatment;~~ treatment.

The physician or eligible psychologist shall so show on ~~his~~ the examination report and shall recommend outpatient commitment. In addition the examining physician or eligible psychologist shall show the name, address, and telephone number of the proposed outpatient treatment physician or center. The person designated in the order to provide transportation shall return the respondent to ~~his~~ the respondent's regular residence ~~or~~ or, with the respondent's consent, to the home of a consenting individual, individual located in the originating county, and ~~he~~ the respondent shall be released from custody.

- (2) If the physician or eligible psychologist finds that the respondent is mentally ill and is dangerous to ~~himself~~ self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., ~~or is mentally retarded, and because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ he the physician or eligible psychologist shall recommend inpatient commitment, and ~~he~~ shall so show on ~~his~~ the examination report. If, in addition to mental illness and dangerousness, the physician or eligible psychologist also finds that the respondent is known or reasonably believed to be mentally retarded, this finding shall be shown on the report. The law-enforcement law enforcement officer or other designated person shall take the respondent to a 24-hour facility described in G.S. 122C-252 pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law-enforcement law enforcement officer or other designated person shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-157(a)(1)a 143B-147(a)(1)a, for custody,

observation, and treatment and immediately notify the clerk of superior court of ~~his actions~~, this action.

In the event an individual known or reasonably believed to be mentally retarded is transported to a State facility for the mentally ill, in no event shall that individual be admitted to that facility except as follows:

- a. Persons described in G.S. 122C-266(b);
- b. Persons admitted pursuant to G.S. 15A-1321;
- c. Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and
- d. Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for the mentally ill who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed.

- (3) If the physician or eligible psychologist finds that neither condition described in subdivisions (1) or (2) of this subsection exists, ~~the respondent shall be released and the proceedings shall be terminated.~~ The person designated in the order to provide transportation shall return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county and the respondent shall be released from custody."

(d) G.S. 122C-263 is amended by adding a new subsection to read:

"(g) The physician or eligible psychologist, at the completion of the examination, shall provide the respondent with specific information regarding the next steps that will occur."

Sec. 9. G.S. 122C-264(b1) reads as rewritten:

"(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is ~~needed~~, needed pursuant to G.S. 122C-262, the clerk of superior court of the county where the 24-hour treatment facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours ~~(excluding hours, excluding Saturday, Sunday and holidays)~~ Sunday, and holidays, for a finding of

reasonable grounds in accordance with 122C-261(b). The clerk shall notify the ~~24-hour treatment~~ facility of the court's findings by telephone and shall proceed as set forth in subsections (b), ~~(c)~~ (c), and (f) of this section."

Sec. 10. (a) G.S. 122C-266(a) reads as rewritten:

"(a) Except as provided in subsections (b) and (e), within 24 hours of arrival at a 24-hour facility described in G.S. 122C-252, the respondent shall be examined by a physician. This physician shall not be the same physician who completed the certificate or examination under the provisions of G.S. 122C-262 or G.S. 122C-263. The examination shall include but is not limited to the assessment specified in G.S. 122C-263(c).

- (1) If the physician finds that the respondent is mentally ill and is dangerous to ~~himself, self,~~ as defined by G.S. 122C-3(11)a., or others, as defined by G.S. 122C-3(11)b., ~~or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ he the physician shall hold the respondent at the facility pending the district court hearing.
- (2) If the physician finds that the respondent meets the criteria for outpatient commitment under G.S. 122C-263(d)(1), ~~he the~~ physician shall show ~~his~~ these findings on the physician's examination report, release the respondent pending the district court hearing, and notify the clerk of superior court of the county where the petition was initiated of ~~his~~ these findings. In addition, the examining physician shall show on the examination report the name, address, and telephone number of the proposed outpatient treatment physician or center. ~~He~~ The physician shall give the respondent a written notice listing the name, address, and telephone number of the proposed outpatient treatment physician or center and directing the respondent to appear at that address at a specified date and time. The examining physician before the appointment shall notify by telephone and shall send a copy of the notice and ~~his~~ the examination report to the proposed outpatient treatment physician or center.
- (3) If the physician finds that the respondent does not meet the criteria for commitment under either G.S. 122C-263(d)(1) or G.S. 122C-263(d)(2), ~~he the~~ physician shall release the respondent and the proceedings shall be terminated.
- (4) If the respondent is released under subdivisions (2) or (3) of this subsection, the ~~law-enforcement~~ law enforcement officer or other person designated to provide transportation shall return the respondent to the ~~originating county,~~ respondent's residence in the originating county or, if requested by the respondent, to another location in the originating county.

(b) G.S. 122C-266(e) reads as rewritten:

"(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination ~~must~~ shall occur not later than the following regular working day."

Sec. 11. (a) G.S. 122C-268(a) reads as rewritten:

"(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. 122C-261(e), 122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:

(1) The court;

(2) Respondent's counsel; or

(3) The State, sufficiently in advance to avoid movement of the respondent."

(b) G.S. 122C-268(j) reads as rewritten:

"(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to ~~himself, self,~~ as defined in G.S. 122C-3(11)a., or ~~dangerous to others,~~ as defined in ~~G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in~~ G.S. 122C-3(11)b. The court shall record the facts that support its findings."

Sec. 12. (a) G.S. 122C-270(a) reads as rewritten:

"(a) The senior regular resident superior court judge of a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ~~ill or mentally retarded with an accompanying behavior disorder, ill.~~ This special counsel shall serve at the pleasure of the appointing judge, ~~may not~~ privately practice law, and shall receive annual compensation within the salary range for assistant district attorneys as fixed by the Administrative Officer of the Courts. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge."

Sec. 13. G.S. 122C-271(b) reads as rewritten:

"(b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that ~~he~~ the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of ~~his~~ the respondent's illness limits or negates ~~his~~ the respondent's ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a

deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show.

- (2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to ~~himself, self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, ~~an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b.,~~ no respondent found to be both mentally retarded and mentally ill may not be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to ~~himself, self, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b.,~~ may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.
- (3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which ~~he the respondent~~ was last a client so notified.
- (4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be

supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised."

Sec. 14. The Mental Health Study Commission shall examine the entire civil commitment process with the goal of placing full responsibility for involuntary commitments on area mental health, developmental disabilities, and substance abuse authorities, in accordance with due process, and of improving quality outcomes in crisis services. The Commission shall report its findings, together with draft legislation and cost analyses, to the 1997 General Assembly by March 1, 1997.

Sec. 15. Nothing in this act shall require hospitals licensed under G.S. 131E or G.S. 122C to contract with area mental health, developmental disabilities, and substance abuse authorities to provide inpatient or outpatient treatment for persons who are mentally retarded with mental illness.

Sec. 16. This act becomes effective January 1, 1997, and applies to commitments on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1148

CHAPTER 740

AN ACT TO PROVIDE ADDITIONAL COVERAGE UNDER THE NORTH CAROLINA BEACH PLAN AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-45-35(b) reads as rewritten:

"(b) If the Association determines that the property is insurable and that there is no unpaid premium due from the applicant for prior insurance on the property, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a policy of essential property insurance and shall offer additional extended coverage, optional perils endorsements, business income coverage, crime insurance, separate policies of windstorm and hail insurance, or their successor forms of coverage, for a term of one year or three years. Any policy issued under this section shall be renewed, upon application, as long as the property is insurable property."

Sec. 2. This act becomes effective January 1, 1997, and applies to policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1165

CHAPTER 741

AN ACT TO ALLOW COUNTIES TO REMOVE VEHICLE REGISTRATION TAX BLOCK UPON FULL PAYMENT OF PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-50.4 reads as rewritten:

"§ 20-50.4. *Division to refuse to register vehicles on which taxes are delinquent.*

Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused, refused or the county certifies to the Division that the tax has been paid. The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were ~~transferred~~, transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division."

Sec. 2. Effective December 1, 1996, G.S. 20-50.4 reads as rewritten:

"§ 20-50.4. (V2) (Effective December 1, 1996) *Division to refuse to register vehicles on which taxes are delinquent and when there is a failure to meet court-ordered child support obligations.*

(a) Delinquent Property Taxes. -- Upon receiving the list of motor vehicle owners and motor vehicles sent by county tax collectors pursuant to G.S. 105-330.7 ~~or a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed,~~ G.S. 105-330.7, the Division shall refuse to register for the owner named in the list any vehicle identified in the list until either the vehicle owner presents the Division with a paid tax receipt identifying the vehicle for which registration was refused or, if the owner was on the report furnished by a child support enforcement agency, the Division shall refuse to register a vehicle for the owner until such time as the Division receives certification pursuant to G.S. 110-142.2, or the county certifies to the Division that the tax has been paid. The

The Division shall not refuse to register a vehicle for a person, not named in the list, to whom the vehicle has been transferred in good faith. Where a motor vehicle owner named in the list has transferred the registration plates from the motor vehicle identified in the list to another motor vehicle pursuant to G.S. 20-64 during the first vehicle's tax year, the Division shall refuse registration of the second vehicle until the vehicle owner presents the Division with a paid tax receipt identifying the vehicle from which the plates were ~~transferred~~, transferred or the county certifies to the Division that the tax has been paid. The certification must be in the form and contain the information required by the Division.

(b) Delinquent Child Support Obligations. -- Upon receiving a report from a child support enforcement agency that sanctions pursuant to G.S. 110-142.2(a)(3) have been imposed, the Division shall refuse to register a

vehicle for the owner named in the report until the Division receives certification pursuant to G.S. 110-142.2 that the payments are no longer considered delinquent."

Sec. 3. Section 2 of this act becomes effective December 1, 1996. The remainder of this act is effective upon ratification. Section 1 of this act is repealed December 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1301

CHAPTER 742

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND TO MAKE OTHER TECHNICAL CORRECTIONS TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 1-50(a)(7) is recodified as G.S. 1-47(6). G.S. 1-47(6), as recodified by this section, reads as rewritten:

- "(6) a. ~~No action against~~ Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or ~~plating shall be brought more than 10~~ plating, within 10 years from after the last act or omission giving rise to the cause of action.
- b. For purposes of this subdivision, 'surveying and platting' means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.
- c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

(b) G.S. 1-52(18) reads as rewritten:

- "(18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in G.S. ~~1-50(7), 1-47(6).~~"

Sec. 2. G.S. 1-349 reads as rewritten:

"§ 1-349. *Procedure where plaintiff is under disability.*

If the party by or for whom the land is claimed in the suit is a ~~married woman, minor,~~ minor or insane person, such value is deemed to be real estate, and shall be disposed of as the court considers proper for the benefit of the persons interested therein."

Sec. 3. G.S. 1-538.2(a) reads as rewritten:

"(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72, 14-72.1, 14-74, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action

brought by the owner of the ~~property~~ he, property, the owner is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable ~~attorneys~~ attorneys' fees. The total compensatory and consequential damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars (\$150.00) and shall not exceed one thousand dollars (\$1,000), except an act punishable under G.S. 14-74 or G.S. 14-90 shall have no maximum limit under this section."

Sec. 4. G.S. 1A-1-30(b)(4) reads as rewritten:

"(4) Unless the court orders otherwise, testimony at a deposition may be recorded by sound recording, sound-and-visual, or stenographic ~~means/methods,~~ means. If the testimony is to be taken by other means in addition to or in lieu of stenographic means, the notice shall state the methods by which it shall be taken and shall state whether a stenographer will be present at the deposition. In the case of a deposition taken by stenographic means, the party that provides for the stenographer shall provide for the transcribing of the testimony taken. If the deposition is by sound recording only, the party noticing the deposition shall provide for the transcribing of the testimony taken. If the deposition is by sound-and-visual means, the appearance or demeanor of deponents or attorneys shall not be distorted through camera techniques. Regardless of the method stated in the notice, any party or the deponent may have the testimony recorded by stenographic means."

Sec. 5. G.S. 6-21.3 reads as rewritten:

"§ 6-21.3. *Remedies for returned check.*

(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation, and who fails to pay the same amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. ~~25-3-512~~ 25-3-506 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one hundred dollars (\$100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section the court or jury may, however,

waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section.

(a1) The first notification letter shall be substantially in the following form:

This letter is written pursuant to G.S. 6-21.3 to inform you that on _____, you made and delivered to the business listed above a check payable to this business containing your name and address in the sum of \$ _____, drawn upon _____ (bank or institution), account # _____. [If the check was received in a face-to-face transaction insert this sentence: This check contained a drivers license identification number from a card with your photograph and mailing address, which was used to identify you at the time the check was accepted.] [If the check was delivered by mail insert this sentence: We have compared your name, address, and signature on the check with the name, address, and signature on file in the account previously established by you or on your behalf, and the signature on the check appears to be genuine.] Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

As acceptor of the check, we give you notice to rectify any bank error or other error in connection with the transaction, and to pay the face value of the check, plus the fees as authorized under G.S. ~~25-3-512~~ 25-3-506 and G.S. 6-21.3(a) as follows:

Face value of the check # \$ _____

Processing fee authorized
under G.S. ~~25-3-512~~ 25-3-506 \$ _____

Bank service fees authorized
under G.S. 6-21.3 \$ _____

Total amount due: \$ _____

If the total amount due listed above is not paid within 30 days of the mailing of this letter, thereafter we may file a civil action to seek civil damages of three times the amount of the check (with a minimum damage of one hundred dollars (\$100.00) and a

maximum damage of five hundred dollars (\$500.00)) for allegedly giving a worthless check in violation of law (G.S. 6-21.3), in addition to the amount of the check and the fees specified above.

Appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(a2) If the total amount due in subsection (a1) has not been paid within 30 days after the mailing of the notification letter, a subsequent demand letter may be sent and shall be substantially in the following form:

On _____, we informed you that we received a check payable to this business containing your name and address in the sum of \$ _____, drawn upon _____ (bank or institution), account # _____. This check contained identification information which was used to identify you as the maker of the check. Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

We notified you that you were responsible for the face value of the check (\$ _____) plus the fees authorized under G.S. ~~25-3-512~~ 25-3-506 (\$ _____) and G.S. 6-21.3(a) (\$ _____) for a total amount due of \$ _____. Thirty days have passed since the mailing of that notification letter, and you have not made payment to us for that total amount due.

Under G.S. 6-21.3, we claim you are now liable for the face value of the check, the fees, and treble damages. The damages we claim are three times the amount of the check or one hundred dollars (\$100.00), whichever is greater, but cannot exceed five hundred dollars (\$500.00). The total amount we claim now due is:

Face value of the check	\$ _____
Processing fee authorized under G.S. 25-3-512 25-3-506	\$ _____
Bank service fees authorized under G.S. 6-21.3	\$ _____
Three times the face value of the check, with a minimum of \$100.00 and a maximum of \$500.00	\$ _____

Total amount due: \$ _____

Payment of the total amount claimed above within 30 days of the mailing of this letter shall satisfy this civil remedy for the returned check.

If payment has not been received within this 30-day period, we will seek appropriate relief before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(b) In an action under subsection (a) of this section, the presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee to the duly licensed attorney representing the prevailing party in such suit.

(c) It shall be an affirmative defense, in addition to other defenses, to an action under this section if it is found that: (i) full satisfaction of the amount of the check or draft was made prior to the commencement of the action, or (ii) that the bank or depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the account or that no credit existed with the bank or depository with which to pay the check or draft upon presentation."

Sec. 6. G.S. 14-3(c) reads as rewritten:

"(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class I felony."

Sec. 7. G.S. 14-32.2(b) reads as rewritten:

"(b) Unless the conduct is prohibited by some other provision of law providing for greater ~~punishment~~, punishment,

- (1) Any person who violates subsection (a) above is guilty of a Class C felony where intentional conduct proximately causes the death of the patient or resident;
- (2) Any person who violates subsection (a) above is guilty of a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;

- (3) Any person who violates subsection (a) above is guilty of a Class F felony where such conduct proximately causes serious bodily injury to the patient or resident."

Sec. 8. G.S. 14-32.2(e) reads as rewritten:

"(e) 'Culpably negligent' shall mean conduct of a ~~willful~~ willful, gross and flagrant character, evincing reckless disregard of human life."

Sec. 9. G.S. 14-32.3(c) reads as rewritten:

"(c) Exploitation. -- A person is guilty of exploitation if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting, and knowingly, willfully and with the intent to permanently deprive the owner of property or money: (i) makes a false representation, (ii) abuses a position of trust or fiduciary duty, or (iii) coerces, commands, or threatens, and, as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.

If the loss of property or money is of a value of more than one thousand dollars (\$1,000) the caretaker is guilty of a Class H felony. If the loss of property or money is of a value of ~~less than~~ one thousand dollars (\$1,000) or less, the caretaker is guilty of a Class 1 misdemeanor."

Sec. 10. G.S. 14-34.5 reads as rewritten:

"§ 14-34.5. *Assault with a firearm on a law enforcement officer.*

Any person who commits an assault with a firearm upon a law enforcement officer while the law enforcement officer is in the performance of his or her duties is guilty of a Class E felony."

Sec. 11. G.S. 14-107 reads as rewritten:

"§ 14-107. *Worthless checks.*

It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

It shall be unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation.

The word 'credit' as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft.

A violation of this section shall be a Class I felony if the amount of the check or draft is more than two thousand dollars (\$2,000). If the amount of the check or draft is two thousand dollars (\$2,000) or less, a violation of this section shall be a misdemeanor punishable as follows:

- (1) If the amount of the check or draft is not over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor.

Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

- (2) If the amount of the check or draft is over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.
- (3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.
- (4) If the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. ~~25-3-512~~, 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Sec. 12. G.S. 14-202.2(b) reads as rewritten:

"(b) ~~Indecent liberties between minors~~ A violation of this section is punishable as a Class 1 misdemeanor."

Sec. 13. G.S. 15A-1002(b) reads as rewritten:

"(b) When the capacity of the defendant to proceed is questioned, the court shall hold a hearing to determine the defendant's capacity to proceed. If an examination is ordered pursuant to ~~subdivisions~~ subdivision (1) or (2) ~~below~~, of this subsection, the hearing shall be held after the examination. Reasonable notice shall be given to the defendant and prosecutor, and the State and the defendant may introduce evidence. The court:

- (1) May appoint one or more impartial medical experts, including forensic evaluators approved under rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to examine the defendant and return a written report describing the present state of the defendant's mental health; reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing; any expert so appointed may be called to testify at the hearing by the court at the request of either party; or
- (2) In the case of a defendant charged with a misdemeanor only after the examination pursuant to subsection (b)(1) of this section or at

any time in the case of a defendant charged with a felony, may order the defendant to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the defendant's capacity to proceed; in the case of a defendant charged with a felony, if a defendant is ordered to a State facility without first having an examination pursuant to subsection (b)(1) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the defendant's capacity; the sheriff shall return the defendant to the county when notified that the evaluation has been completed; the director of the facility shall direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who shall bring it to the attention of the court; the report is admissible at the hearing.

(3) Repealed by Session Laws 1989, c. 486, s. 1."

Sec. 14. G.S. 15A-1002(b1) reads as rewritten:

"(b1) If the report pursuant to ~~subdivisions~~ subdivision (1) or (2) of subsection (b) of this section indicates that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122C of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or, if the defendant is hospitalized, in the county in which the defendant is hospitalized."

Sec. 15. G.S. 15A-1340.14(e) reads as rewritten:

"(e) Classification of Prior Convictions From Other Jurisdictions. -- Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points."

Sec. 16. G.S. 15A-1340.22(a) reads as rewritten:

"(a) Limits on Consecutive Sentences. -- If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class 4 A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most

serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors."

Sec. 17. G.S. 30-26 reads as rewritten:

"§ 30-26. *When above allowance is in full.*

If the estate of a deceased be insolvent, or if his personal estate does not exceed ten thousand dollars (\$10,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Sec. 18. G.S. 47-41.01(b) reads as rewritten:

"(b) If the deed or other instrument is executed by the corporation's chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer signing the name of such corporation by him as such officer, is sealed with its common or corporate seal, and is attested by another person who is its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier, the following form of acknowledgment is sufficient:

.....
(State and county, or other
description of place where
acknowledgment is taken)

I,,

.....,
(Name of officer taking
(Official title of officer
acknowledgment)

taking acknowledgment)

certify thatpersonally came before

(Name of secretary, assistant secretary,
trust officer, assistant trust officer,
cashier or assistant cashier)

me this day and acknowledged that he (or she) is.....

(Secretary, assistant

secretary, trust officer,

assistant trust officer,

cashier or assistant

cashier)

of, a corporation, and that by authority duly

(Name of corporation)

given and as the act of the corporation, the foregoing instrument was signed in its name by its.....,

(Chairman, president, chief executive
officer, vice-president, assistant

vice-president, treasurer, or chief financial officer)
sealed with its corporate seal, and attested by himself (or herself) as its

(Secretary, assistant secretary,
trust officer, assistant trust officer,
cashier or assistant cashier)

My commission expires

(Date of expiration of commission as notary
public)

Witness my hand and official seal, this theday of

.....,

(Month)

.....

(Year)

.....

(Signature of officer taking acknowledgment)
(Official seal, if officer taking
acknowledgment has one)

My commission expires

(Date of expiration of commission as notary
public)

- (1) The words 'a corporation' following the blank for the name of the corporation may be omitted when the name of the corporation ends with the word 'Corporation' or 'Incorporated.'
- (2) The words 'My commission expires' and the date of expiration of the notary public's commission may be omitted except when a notary public is the officer taking the acknowledgment. The fact that these words and this date may be located in a position on the form different from the position indicated in this subsection does not by itself invalidate the form.
- (3) The words 'and official seal' and the seal itself may be omitted when the officer taking the acknowledgment has no seal or when such officer is the clerk, assistant clerk, or deputy clerk of the superior court of the county in which the deed or other instrument acknowledged is to be registered."

Sec. 19. G.S. 47-46.3 reads as rewritten:

"§ 47-46.3. *Affidavit of lost note.*

The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:

AFFIDAVIT OF LOST NOTE

[Name of affiant] personally appeared before me in _____ County, State of _____, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and

2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument ~~has been~~ was satisfied on (date of satisfaction), and the affiant is responsible for cancellation of the same.

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19_____.

[Signature and seal of notary public or other official authorized to administer oaths]."

Sec. 20. G.S. 53-141 reads as rewritten:

"§ 53-141. *Powers.*

Industrial banks shall have perpetual duration and succession in their corporate name unless a limited period of duration is stated in their certificate of incorporation. They shall have the powers conferred by paragraphs 1, 2, 3, 5 and 7 of G.S. 55-17, subdivisions (1), (2), and (3) of subsection (a) of G.S. 55-3-02, and subdivision (3) of G.S. 53-43, such additional powers as may be necessary or incidental for the carrying out of their corporate purposes, and in addition thereto the following powers:

- (1) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of indebtedness, and to loan money on real or personal security, and to purchase notes, bills of exchange, acceptances or other choses in action, and to take and receive interest or discounts subject to G.S. 53-43(1).
- (2) To make loans and charge and receive interest at rates not exceeding the rates of interest provided in G.S. 24-1.1 and G.S. 24-1.2.
- (3) To establish branch offices or places of business within the county in which its principal office is located, and elsewhere in the State, after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find
 - a. That the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and
 - b. That the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community.

Provided, that the Commissioner of Banks shall not authorize the establishment of any branch the paid-in capital of whose parent bank is not sufficient in amount to provide for capital in an

amount equal to that required with respect to the establishment of branches of commercial banks under the provisions of G.S. 53-62. For the purposes of this paragraph, the provisions of G.S. 53-62 as to the meaning of the word 'capital' shall be applicable.

A bank may discontinue a branch office upon resolution of its board of directors. Upon the adoption of such a resolution, the bank shall follow the procedures for closing a branch as set forth at G.S. 53-62(e). No branch shall be closed until approved by the Commissioner of Banks.

- (4) Subject to the approval of the Commissioner of Banks and on the authority of its board of directors, or a majority thereof, to enter into such contract, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions, or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the Federal Banking Act of 1933 (section twelve B of the Federal Reserve Act as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporations.
- (5) To solicit, receive and accept money or its equivalent on deposit both in savings accounts and upon certificates of deposit.
- (6) Subject to the approval of the State Banking Commission, to solicit, receive and accept money or its equivalent on deposit subject to check; provided, however, no such approval shall be given unless and until such industrial bank meets the capital requirements of a commercial bank as set forth in G.S. 53-2.
- (7) To transact any lawful business in aid of the United States in time of war or engagement of the nation's armed forces in hostile military operations."

Sec. 21. G.S. 53-175 reads as rewritten:

"§ 53-175. *Fee for returned checks.*

A licensee may collect the fee for returned checks to the extent permitted by G.S. ~~25-3-512~~, 25-3-506. This section shall apply to any loan made by any licensee under this Article."

Sec. 22. G.S. 53-224.21 reads as rewritten:

"§ 53-224.21. *Conditions for interstate merger prior to June 1, 1997.*

An interstate merger transaction prior to June 1, 1997, involving a North Carolina bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in North Carolina, unless

the laws of the home state of each out-of-state bank involved in the interstate merger transaction ~~permits~~ permit North Carolina banks under substantially the same terms and conditions as are set forth in Part 3 to acquire banks and establish and maintain branches in that state by means of interstate merger transactions."

Sec. 23. G.S. 58-14-15 reads as rewritten:

"§ 58-14-15. *Penalties provided for unauthorized acts.*

When any domestic insurer knowingly engages in the practice of soliciting, advertising or making contracts for insurance in states or jurisdictions in which it is not licensed, the Commissioner may issue an order requiring the company to cease and desist from engaging in such activities and, for the purposes of this section, the acts prohibited by G.S. 58-14-10 and the foregoing sections, are declared to be an unfair trade practice within the meaning of G.S. 58-63-15 and G.S. 58-63-40. When the Commissioner has reason to believe that any domestic company has been engaged or is engaging in the practice of knowingly soliciting, advertising or writing contracts of insurance on risks within a state or jurisdiction in which it is not licensed, the Commissioner shall serve the company with notice of hearing and the hearing shall conform with the hearing procedure set forth in G.S. 58-63-25. Any action taken by the Commissioner after the hearing shall comply with G.S. 58-63-32, and any company aggrieved by an order of the Commissioner is entitled to the judicial review provided in G.S. 58-63-35."

Sec. 24. G.S. 58-30-10(7) reads as rewritten:

"(7) 'Domestic guaranty association' means the Postassessment Insurance Guaranty Association in Article 48 of this Chapter, as amended; ~~the~~ the North Carolina Self-Insurance Guaranty Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers."

Sec. 25. G.S. 58-35-10(b) reads as rewritten:

"(b) An insurance company duly licensed in this State may make an installment payment charge as set forth in the rate filings and approved by the Commissioner and ~~are~~ is thereby exempt from the provisions of this Article."

Sec. 26. G.S. 58-40-90 reads as rewritten:

"§ 58-40-90. *Examination of rating, joint underwriting, and joint reinsurance organizations.*

The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-40-50 and each advisory organization licensed pursuant to G.S. 58-40-55. The Commissioner may, as often as deemed expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-40-60. This examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall

exhibit all books, records, ~~account~~, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of that state."

Sec. 27. G.S. 58-51-15(a)(2)a. reads as rewritten:

"a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy ~~provisions~~ provision may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars (\$5,000) or more for any one sickness or ~~injury~~. ~~Disability~~ ~~injury~~; disability income policies affording benefits of one hundred dollars (\$100.00) or more per month for not less than 12 ~~months~~ months; and franchise policies. Other policies to which this section applies must delete the words 'except fraudulent misstatements.'

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-51-15(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption 'INCONTESTABLE.'

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)"

Sec. 28. The catch line of G.S. 58-66-35 reads as rewritten:

"§ 58-66-35. *Application to policies; ~~dates; duties of the Commissioner~~ dates.*"

Sec. 29. G.S. 62-2(3a) reads as rewritten:

"(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and

fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility ~~bills~~, bills;"

Sec. 30. G.S. 62-2(4a) reads as rewritten:

"(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plant plants under construction;"

Sec. 31. G.S. 62-2(7) reads as rewritten:

"(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; ~~and~~".

Sec. 32. G.S. 62-2(8) reads as rewritten:

"(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy ~~supply~~, supply; and"

Sec. 33. G.S. 62-200(c) reads as rewritten:

"(c) In reckoning what is a reasonable time for such transportation, it shall be considered that such common carrier has transported household goods within a reasonable time if it has done so in the ordinary time required for transporting such articles by similar carriers between the receiving and shipping stations. The Commission is authorized to establish reasonable times for transportation by the various modes of carriage which shall be held to be prima facie reasonable, and a failure to transport within such times shall be held prima facie unreasonable. This section shall be construed to refer not only to delay in starting the household goods from the station where ~~it is~~ they are received, but to require the delivery at ~~its~~ their destination within the time specified: Provided, that if such delay shall be due to causes which could not in the exercise of ordinary care have been foreseen or which were unavoidable, then upon the establishment of these facts to the satisfaction of the court trying the cause, the defendant common carrier shall be relieved from any penalty for delay in the transportation of household goods, but it shall not be relieved from the costs of such action. In all actions to recover penalties against a common carrier under this section, the burden of proof shall be upon such carrier to show where the delay, if any, occurred. The penalties provided in this section shall be in addition to the damages recoverable for failure to transport within a reasonable time."

Sec. 34. G.S. 66-234(d) reads as rewritten:

"(d) The registration of the membership camping operator shall be renewed annually with the fee required in G.S. ~~66-226~~ 66-236 not later than 30 days prior to the anniversary of the current registration. The application

shall include all changes which have occurred in the information included in the application previously filed."

Sec. 35. G.S. 89C-25(7) reads as rewritten:

"(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, ~~railroad~~, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer."

Sec. 36. G.S. 90-411 reads as rewritten:

"§ 90-411. *Record copy fee.*

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee shall be fifty cents (50¢) per page, provided that the health care provider may impose a minimum fee of up to ten dollars (\$10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal injury, except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. ~~97-26.4~~, 97-26.1."

Sec. 37. G.S. 91A-8 reads as rewritten:

"§ 91A-8. *Pawnbroker fees; interest rates.*

No pawnbroker shall demand or receive an effective rate of interest greater than two percent (2%) per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the pawnbroker may charge, contract for, and recover an additional monthly fee for the following services, including but not limited to:

- (1) Title investigation;
- (2) Handling, appraisal, and storage;
- (3) Insuring a security;
- (4) Application fee;
- (5) Making daily reports to local law enforcement officers; and
- (6) For other expenses, including losses of every nature, and all other services.

In no event may the total of the above listed monthly fees on a pawn transaction exceed twenty percent (20%) of the principal up to a maximum of the following:

First month	\$100.00
Second month	75.00
Third month	75.00
Fourth month and thereafter	50.00

In addition, pawnbrokers may charge fees for returned checks as allowed by G.S. ~~25-3-512~~, 25-3-506."

Sec. 38. G.S. 153A-405(b) reads as rewritten:

"(b) The proposition submitted to the voters shall be substantially in one or more of the following forms and may include part or all of the bracketed language as appropriate and other such modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units the right to issue which is proposed to be assumed by the consolidated city-county:

- (1) 'Shall the County ofand the County ofbe consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said counties on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~ credit]?
[] YES [] NO'
- (2) 'Shall the City of and the City ofbe consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said cities on the date of this referendum)] and any of said authorized

but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~ credit?

[☐] YES [☐] NO'

- (3) 'Shall the City of and the County of be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)]] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and ~~credit?~~ credit?

[☐] YES [☐] NO'".

Sec. 39. G.S. 159I-30(e) reads as rewritten:

"(e) Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be payable solely from any one or more of the sources of payment authorized by this section as may be specified in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on such bond or note are payable solely from the sources of payment specified in the bond order or trust, agreement under which it is authorized or secured, provided that:

- (1) Any such use of such sources will not constitute a pledge of the unit's taxing ~~owner;~~ power; and
- (2) The municipality is not obligated to pay such principal or interest or premium except from such sources."

Sec. 40. G.S. 160B-20(b) reads as rewritten:

"(b) Assumption of Debt Secured by a Pledge of Faith and Credit by Consolidated City-County. -- Subject to the requirement of referendum approval of certain debt assumption for consolidation ~~by the General Assembly and effective upon the effective date of the consolidation~~ provided in G.S. 160B-18(a), upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(b), the debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation (including formerly authorized but unissued debt secured by a pledge of faith and credit as may have been issued at the time) is assumed by, and becomes a binding obligation of the consolidated city-county, and the faith and credit of the consolidated city-county is pledged to secure any such assumed debt secured

by a pledge of faith and credit. In addition, any debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall become a binding obligation of the consolidated city-county and the faith and credit of the consolidated city-county is pledged to secure any such debt."

Sec. 41. G.S. 160B-21(a) reads as rewritten:

"(a) Publication of Notice of Enactment. -- Following ratification of an act of the General Assembly authorizing consolidation, there shall be published once in a newspaper of general circulation in the county a notice of said enactment and, if applicable, the fact that in connection with said enactment there is an assumption by the consolidated city-county of the debt secured by a pledge of faith and credit of the consolidating city and, if applicable, assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city and that there is also binding on the consolidated city-county the debt secured by a pledge of faith and credit of the county and, if applicable, there is vested in the consolidated city-county the right to issue authorized but unissued debt secured by a pledge of faith and credit of the county with the following statement appended:

'Any action or proceeding challenging the regularity or validity of this referendum enactment must be begun within 30 days after the date of publication of this statement of result, notice.'

The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other persons as shall be designated by each applicable governing body or board."

Sec. 42. G.S. 75A-13.2(a) reads as rewritten:

"(a) No person shall operate a personal watercraft on the waters of this State at any time between the hours from one hour after sunset to one hour before sunrise. For purposes of this section, 'personal watercraft' means a small ~~class A-1 or A-2~~ vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle."

Sec. 42.1. Section 2 of Chapter 591 of the 1995 Session Laws, (Reg. Sess., 1996), reads as rewritten:

"Sec. 2. G.S. 50B-3 reads as rewritten:

"§ 50B-3. *Relief.*

(a) The court may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse party possession of the residence or household of the parties and exclude the other spouse party from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;

- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from ~~harassing or interfering with the other; doing any or all of the following:~~
 - a. Threatening, abusing, or following the other party;
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
 - c. Otherwise interfering with the other party;
- (10) Award costs and attorney's fees to either party;
- (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- (12) **(Effective October 1, 1996)** Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. Protective orders entered or consent orders approved shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

(d) **(Effective April 1, 1996)** The sheriff of the county where a domestic violence order is entered shall provide for immediate entry of the order onto the Division of Criminal Information Network and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications of the order shall also be entered."

Sec. 42.2. Section 5 of Chapter 606 of the 1995 Session Laws, (Reg. Sess., 1996) reads as rewritten:

"Sec. 5. This act becomes effective January 1, 1997, except that the requirements imposed by Section 3 of this act on home care agencies become effective January 1, 1998. Sections 3 2 and 4 3 apply to applicants who apply for employment on or after the appropriate effective date."

Sec. 42.3. G.S. 1-285 reads as rewritten:

"§ 1-285. Undertaking on appeal.

(a) To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in the sum of two hundred fifty dollars (\$250.00), or any lesser sum as might be adjudged by the court, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk ~~by with whom the judgment or order was entered; filed; or such sum must be deposited with the appropriate clerk by whom the judgment or order was entered, to abide the event of the appeal.~~ of the appellate division in compliance with the North Carolina Rules of Appellate Procedure.

(b) The provisions of this section do not apply to the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof."

Sec. 42.4. G.S. 1-286 reads as rewritten:

"§ 1-286. Justification of sureties.

The written undertaking on appeal must be accompanied by the affidavit of one of the sureties that he is worth double the amount specified therein. The respondent may except to the sufficiency of the sureties within ten days after the notice of appeal; and unless they or other sureties justify within the ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days."

Sec. 42.5. Sections 6 and 7 of Chapter 636 of the 1995 Session Laws (Reg. Sess., 1996) are repealed.

Sec. 43. G.S. 150B-21.3(b) reads as rewritten:

"(b) Permanent Rule. -- A permanent rule approved by the Commission becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a later different effective date applies under this subsection. section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section."

Sec. 44. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1328

CHAPTER 743

AN ACT TO IMPLEMENT PHASE ONE OF THE RESTRUCTURING OF ENVIRONMENTAL PROGRAMS IN THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AND TO MAKE CONFORMING STATUTORY CHANGES, AS RECOMMENDED BY THE ENVIRONMENTAL PROCESS ACTION TEAM OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AND TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-183.7(c) reads as rewritten:

"(c) Fee Distribution. -- Fees collected for inspection stickers are payable to the Division of Motor Vehicles. The amount of each fee listed in the table below shall be credited to the Highway Fund, the Emissions Program Account established in subsection (d) of this section, the Volunteer Rescue/EMS Fund established in G.S. 58-87-5, the Rescue Squad Workers' Relief Fund established in G.S. 58-88-5, and the Division of ~~Environmental Management~~ Air Quality of the Department of Environment, Health, and Natural Resources:

<u>Recipient</u>	<u>Safety Only Sticker</u>	<u>Emissions and Safety Sticker</u>
Highway Fund	.75	.00
Emissions Program Account	.00	1.80
Volunteer Rescue/EMS Fund	.15	.15
Rescue Squad Workers' Relief Fund	.10	.10
Division of Environmental Management <u>Air Quality</u>	.00	.35."

Sec. 2. G.S. 87-94(f) is repealed.

Sec. 3. G.S. 106-802(4) reads as rewritten:

"(4) 'Siting' or 'site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Natural Resources Conservation Service or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission and either of which report provides the basis for certification by the ~~Division of Environmental Management~~ Department of Environment, Health, and Natural Resources pursuant to the rules appearing in the

North Carolina Administrative Code governing waste not discharged to surface waters."

Sec. 4. G.S. 130A-291 reads as rewritten:

"§ 130A-291. *Division of ~~Solid~~ Waste Management.*

(a) For the purpose of promoting and preserving an environment that is conducive to public health and welfare, and preventing the creation of nuisances and the depletion of our natural resources, the Department shall maintain a Division of ~~Solid~~ Waste Management to promote sanitary processing, treatment, disposal, and statewide management of solid waste and the greatest possible recycling and recovery of resources, and the Department shall employ and retain ~~such~~ qualified personnel as may be necessary to effect such purposes. It is the purpose and intent of the State to be and remain cognizant not only of its responsibility to authorize and establish ~~the~~ a statewide solid waste management program, but also of its responsibility to monitor and supervise, through the Department, the activities and operations of units of local government implementing a permitted solid waste management facility serving a specified geographic area in accordance with a solid waste management plan.

(b) In furtherance of ~~said~~ this purpose and intent, it is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that solid waste management facilities permitted hereunder and serving a specified geographic area shall be used by public or private owners or occupants of all lands, buildings, and premises within ~~said~~ the geographic area, and a unit of local government may, by ordinance, require that all solid waste generated within ~~said~~ the geographic area and placed in the waste stream for disposal, shall be delivered to the permitted solid waste management facility or facilities serving ~~such~~ the geographic area. Actions taken pursuant to this Article shall be deemed to be acts of the sovereign power of the State of North Carolina, and to the extent reasonably necessary to achieve the purposes of this section, a unit of local government may displace competition with public service for solid waste management and disposal. It is further determined and declared that no person, firm, corporation, association or entity within ~~said~~ the geographic area shall engage in any activities which would be competitive with this purpose or with ordinances, rules adopted pursuant to the authority granted herein."

Sec. 5. G.S. 130B-5(c) reads as rewritten:

"(c) The Governor is authorized to enter into interstate agreements for the management of hazardous waste. Such agreements shall provide for access to suitable facilities for management of hazardous waste; encourage reductions in the volume or quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations of hazardous waste management equitably among the party states; and provide for protection of human health and the environment in a manner that is both ecologically and economically sound. In negotiating such agreements, the Governor may request such assistance as he deems appropriate from the Attorney General, the ~~Solid Division of Waste Management Division~~ of the Department, and the Commission. The Governor shall submit any such agreement to the General Assembly for its approval, and no such agreement shall be effective until approved by the General Assembly."

Sec. 6. G.S. 130B-7(a)(1) reads as rewritten:

"(1) Shall (i) with the assistance of the Solid Division of Waste Management ~~Division~~ of the Department, periodically review current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, and capacity assurance requirements under CERCLA/SARA, (ii) determine whether additional facilities for the management of hazardous waste may be needed in this State, and (iii) make appropriate recommendations to the Governor and the General Assembly;"

Sec. 7. G.S. 130B-16(c)(2) reads as rewritten:

"(2) Funding of a portion of the cost of the Pollution Prevention Pays Program, the waste minimization program administered by the Technical Assistance and Support Unit of the Solid Division of Waste Management ~~Division~~ of the Department, other programs which foster multimedia waste prevention, reduction, reuse, and recycling, and programs which provide assistance to small quantity generators."

Sec. 8. G.S. 130B-22(a) reads as rewritten:

"(a) To assist the Commission in the performance of its responsibilities under this Chapter and to advise the General Assembly, there is created the Inter-Agency Committee on Hazardous Waste (herein called the 'Committee'). The members shall be: the Secretary or the Secretary's designee; the Director of the Solid Waste Management Division ~~Division of Waste Management~~ of the Department or his designee; the Chief of the Hazardous Waste Management Section of the Solid Waste Management Division ~~Division of Waste Management~~ or his designee; one additional representative of the Solid Waste Management Division ~~Division of Waste Management~~ with expertise in CERCLA/SARA capacity assurance requirements appointed by the Director of the Division, the Chairman of the Commission or his designee; one additional member of the Commission appointed by the Chairman of the Commission; the Executive Director of the Commission; the Director of the Pollution Prevention Pays Program; four representatives of the Department of Environment, Health, and Natural Resources with expertise in geology, groundwater, water quality, and air quality; the representative of the Attorney General's office who provides legal services to the Commission; and a representative of the Attorney General's office who provides legal services to the Solid Waste Management Division ~~Division of Waste Management~~ designated by the Director of the Solid Waste Management Division ~~Division of Waste Management~~ with the approval of the Attorney General. The Secretary or the Secretary's designee shall serve as the Chairman of the Committee, and the Solid Waste Management Division ~~Division of Waste Management~~ of the Department shall provide professional and clerical support to the Committee."

Sec. 9. G.S. 136-28.8(g) reads as rewritten:

"(g) ~~Beginning October 1, 1994, On or before 1 October of each year,~~ the Department shall report ~~annually~~ to the ~~Office of Waste Reduction,~~ Division of Pollution Prevention and Environmental Assistance of the Department of Environment, Health, and Natural Resources, Resources as to the amounts and types of recycled materials that were specified or used in contracts that were entered into during the previous fiscal year. ~~The Office of Waste Reduction~~ On or before 1 December of each year, the Division of Pollution Prevention and Environmental Assistance shall prepare a summary of this report and submit the summary ~~annually~~ to the Joint Legislative Commission on Governmental ~~Operations,~~ Operations and the Environmental Review Commission."

Sec. 10. G.S. 143-58.2(d) reads as rewritten:

"(d) The Department of Administration, in cooperation with the ~~Office of Waste Reduction,~~ Division of Pollution Prevention and Environmental Assistance of the Department of Environment, Health, and Natural Resources, shall identify materials and supplies with recycled content that meet appropriate standards for use by State departments, institutions, agencies, community colleges, and local school administrative units."

Sec. 11. G.S. 143-58.2(f) reads as rewritten:

"(f) ~~Beginning October 1, 1994, On or before 1 October of each year,~~ each State department, institution, agency, community college, and local school administrative unit authorized to purchase materials and supplies shall report ~~annually~~ to the ~~Office of Waste Reduction,~~ Division of Pollution Prevention and Environmental Assistance of the Department of Environment, Health, and Natural Resources, the amounts and types of materials and supplies with recycled content that were purchased during the previous fiscal year and its progress toward reaching the goals under G.S. 143-58.3. ~~The Office of Waste Reduction~~ On or before 1 December of each year, the Division of Pollution Prevention and Environmental Assistance shall prepare a summary of these reports and submit the summary ~~annually~~ to the Joint Legislative Commission on Governmental ~~Operations,~~ Operations and the Environmental Review Commission."

Sec. 12. G.S. 143-214.2A(b)(6) is repealed.

Sec. 13. G.S. 143-215.3A(b1) reads as rewritten:

"(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of ~~Environmental Management~~ Air Quality of the Department pursuant to G.S. 20-183.7(c)(2) shall be credited to the I & M Air Pollution Control Account and shall be applied to the costs of developing and implementing an air pollution control program for mobile sources."

Sec. 14. G.S. 143-215.6A(h) is repealed.

Sec. 15. G.S. 143-215.17(b)(7) is repealed.

Sec. 16. G.S. 143-215.94O(a)(1) reads as rewritten:

"(1) An employee of the Department who is not employed by the section of the ~~Division of Environmental Management~~ responsible for the administration of the underground storage tank cleanup program who shall be appointed by the Secretary and who shall serve at the pleasure of the Secretary."

Sec. 17. G.S. 143-215.94W(g) is repealed.

Sec. 18. G.S. 143-215.114(g) is repealed.

Sec. 19. G.S. 143-439 reads as rewritten:

"(b) The Pesticide Advisory Committee shall consist of: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife or biology; one member representing the North Carolina Department of Agriculture; one member representing the Department of Environment, Health, and Natural Resources; the State Health Director or his designee; one representative of a public utility or railroad company which uses pesticides; one representative of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; one member of the general public (at large); one member actively engaged in forest pest management; and one member representing the Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources. Each State agency represented [representative] on the Committee shall be appointed by the head of the agency. Other members of the Committee shall be appointed by the Board."

Sec. 20. G.S. 143B-279.3(c)(2) reads as rewritten:

"(2) There is hereby created a division within the environmental area of the Department of Environment, Health, and Natural Resources to be named the Division of Solid Waste Management. All functions, powers, duties, and obligations of the Solid Waste Management Section of the Division of Health Services of the Department of Human Resources are transferred in their entirety to the Division of Solid Waste Management of the Department of Environment, Health, and Natural Resources."

Sec. 21. G.S. 143B-282.1(f) reads as rewritten:

"(f) As used in this section, 'Secretary' means the Secretary of Environment, Health, and Natural Resources. ~~The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources.~~"

Sec. 22. G.S. 147-45 reads as rewritten:

"§ 147-45. *Distribution of copies of State publications.*

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

<u>Agency or Institution</u>	<u>Session Laws</u>	<u>Assembly Journals</u>
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1

Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment, Health, and Natural		
Resources, Department of	1 6	0
Division of Environmental Management	2	0
Board of Environment, Health, and		
Natural Resources	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3 6	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health, Developmental		
Disabilities, and Substance Abuse Services,		
Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission,		
North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1

Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety,		
Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the		
Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library		
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0

AS MANY AS REQUESTED

University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J.C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		

Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

Sec. 23. G.S. 159G-3(12) reads as rewritten:

"(12) 'Receiving agency' means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of ~~Environmental Management~~ Water Quality with respect to receipt of applications for revolving loans and grants for wastewater systems."

Sec. 24. G.S. 159I-3(6) reads as rewritten:

"(6) 'Division' means the Division of ~~Solid~~ Waste Management of the Department of Environment, Health, and Natural Resources and any successor of ~~said Division~~. the Division of Waste Management."

Sec. 25. References in the Session Laws to any division of the Department of Environment, Health, and Natural Resources that is subdivided or renamed by this act shall be deemed to refer to the successor division. Every Session Law that refers to any division of the Department of Environment, Health, and Natural Resources to which this act applies or that relates to any power, duty, function, or obligation of any of those divisions and that continues in effect after this act becomes effective shall be construed so as to be consistent with this act. The repeal by this act of language authorizing the Secretary of Environment, Health, and Natural Resources to delegate any power, duty, or function is intended to repeal redundant language and does not alter the power of the Secretary of Environment, Health, and Natural Resources to assign or reassign any function vested in the Secretary or the Department of Environment, Health, and Natural Resources under G.S. 143B-10(a). This act shall not be construed to affect any pending action by or obligation due to any division of the Department of Environment, Health, and Natural Resources that is subdivided or renamed by this act.

Sec. 26. G.S. 159I-30(e) reads as rewritten:

"(e) Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be payable solely from any one or more of the sources of payment authorized by this section as may be specified in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on such bond or note are payable solely from the sources of payment specified in the bond order or trust, agreement under which it is authorized or secured, provided that:

- (1) Any such use of such sources will not constitute a pledge of the unit's taxing ~~owner~~; power; and
- (2) The municipality is not obligated to pay such principal or interest or premium except from such sources."

Sec. 27. This act becomes effective 1 July 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

FABRICATE PRODUCTS FROM DIES, MOLDS, FORMS, OR PATTERNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-2 reads as rewritten:

"§ 44A-2. Persons entitled to lien on personal property.

(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or

(2) The contract price; or

(3) One hundred dollars (\$100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests.

(b) Any person engaged in the business of operating a hotel, motel, or boardinghouse has a lien upon all baggage, vehicles and other personal property brought upon his premises by a guest or boarder who is an owner thereof to the extent of reasonable charges for the room, accommodations and other items or services furnished at the request of the guest or boarder. This lien shall not have priority over any security interest in the property which is perfected at the time the guest or boarder brings the property to said hotel, motel or boardinghouse.

(c) Any person engaged in the business of boarding animals has a lien on the animals boarded for reasonable charges for such boarding which are contracted for with an owner or legal possessor of the animal. This lien shall have priority over perfected and unperfected security interests.

(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests.

(e) Any lessor of nonresidential demised premises has a lien on all furniture, furnishings, trade fixtures, equipment and other personal property to which the tenant has legal title and which remains on the demised premises if (i) the tenant has vacated the premises for 21 or more days after the paid rental period has expired, and (ii) the lessor has a lawful claim for damages against the tenant. If the tenant has vacated the premises for 21 or more days after the expiration of the paid rental period, or if the lessor has received a judgment for possession of the premises which is executable and the tenant has vacated the premises, then all property remaining on the premises may be removed and placed in storage. If the total value of all property remaining on the premises is less than one hundred dollars (\$100.00), then it shall be deemed abandoned five days after the tenant has vacated the premises, and the lessor may remove it and may donate it to any

charitable institution or organization. Provided, the lessor shall not have a lien if there is an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien. This lien shall be for the amount of any rents which were due the lessor at the time the tenant vacated the premises and for the time, up to 60 days, from the vacating of the premises to the date of sale; and for any sums necessary to repair damages to the premises caused by the tenant, normal wear and tear excepted; and for reasonable costs and expenses of sale. The lien created by this subsection shall be enforced by sale at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have priority over any security interest in the property which is perfected at the time the lessor acquires this lien.

(e1) This Article shall not apply to liens created by storage of personal property at a self-service storage facility.

(f) Any person who improves any textile goods in the ordinary course of his business pursuant to an express or implied contract with the owner or legal possessor of such goods shall have a lien upon all goods of such owner or possessor in his possession for improvement. The amount of such lien shall be for the entire unpaid contracted charges owed such person for improvement of said goods including any amount owed for improvement of goods, the possession of which may have been relinquished, and such lien shall have priority over perfected and unperfected security interests. 'Goods' as used herein includes any textile goods, yarns or products of natural or man-made fibers or combination thereof. 'Improve' as used herein shall be construed to include processing, fabricating or treating by throwing, spinning, knitting, dyeing, finishing, fabricating or otherwise.

(g) Any person who fabricates, casts, or otherwise makes a mold or who uses a mold to manufacture, assemble, or otherwise make a product pursuant to an express or implied contract with the owner of such mold shall have a lien upon the mold. For a lien to arise under this subsection, there must exist written evidence that the parties understood that a lien could be applied against the mold, with the evidence being in the form either of a written contract or a separate written statement provided by the potential holder of the lien under this subsection to the owner of the mold prior to the fabrication or use of the mold. The written contract or separate written statement must describe generally the amount of the potential lien as set forth in this subsection. The amount of the lien under this subsection shall equal the total of (i) any unpaid contracted charges due from the owner of the mold for making the mold, plus (ii) any unpaid contracted charges for all products made with the mold. The lien under this subsection shall not have priority over any security interest in the mold which is perfected at the time the person acquires this lien. As used in this subsection, the word "mold" shall include a mold, die, form, or pattern.

Sec. 2. This act becomes effective October 1, 1996, and applies to charges incurred on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1301

CHAPTER 745

AN ACT TO PROVIDE THAT IT IS A CLASS F FELONY TO ABDUCT A CHILD FROM ANY PERSON, AGENCY, OR INSTITUTION LAWFULLY ENTITLED TO THE CHILD'S CUSTODY AS RECOMMENDED BY THE NORTH CAROLINA CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-41 reads as rewritten:

"§ 14-41. *Abduction of children.*

~~If anyone shall abduct or by any means induce any child under the age of fourteen years, who shall reside with its father, mother, uncle, aunt, brother or elder sister, or shall reside at a school, or be an orphan and reside with a guardian, to leave such person or school, he shall be punished as a Class F felon.~~

(a) Any person who, without legal justification or defense, abducts or induces any minor child who is at least four years younger than the person to leave any person, agency, or institution lawfully entitled to the child's custody, placement, or care shall be guilty of a Class F felony.

(b) The provisions of this section shall not apply to any public officer or employee in the performance of his or her duty."

Sec. 2. This act becomes effective January 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1083

CHAPTER 746

AN ACT TO REQUIRE FIRST-CLASS MAIL NOTICE TO ALL PROPERTY OWNERS IN AN AREA PROPOSED FOR ADDITION TO A MUNICIPALITY'S EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION, PROPORTIONAL REPRESENTATION FOR RESIDENTS OF THE ETJ ON THE PLANNING AGENCY, AND A HEARING BEFORE COUNTY APPOINTMENT OF REPRESENTATION TO THE PLANNING AGENCY, TO PROHIBIT A MUNICIPALITY FROM CLAIMING FOR LOST TAX REVENUE DURING THE PENDENCY OF AN APPEAL OF ANNEXATION AND TO AMEND THE STATUTE OF LIMITATIONS FOR APPEALING THE VALIDITY OF A ZONING ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-360 is amended by adding a subsection to read:

"(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice

shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning agency and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud."

Sec. 2. G.S. 160A-362 reads as rewritten:

"§ 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency or agencies provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing residents at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning agency and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning agency or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning agency or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning agency and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning agency or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If

a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the agency to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area."

Sec. 3. G.S. 160A-50 is amended by adding a new subsection to read:

"(m) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal."

Sec. 4. G.S. 160A-38 is amended by adding a new subsection to read:

"(l) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal."

Sec. 5. G.S. 1-54.1 reads as rewritten:

"§ 1-54.1. ~~Nine~~ Two months.

Within ~~nine~~ two months an action contesting the validity of any zoning ordinance or amendment thereto adopted by a county under Part 3 of Article 18 of Chapter 153A of the General Statutes or other applicable law or adopted by a city under Chapter 160A of the General Statutes or other applicable law."

Sec. 6. G.S. 153A-348 reads as rewritten:

"§ 153A-348. *Statute of limitations.*

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Part or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within ~~nine~~ two months as provided in G.S. 1-54.1."

Sec. 7. G.S. 160A-364.1 reads as rewritten:

"§ 160A-364.1. *Statute of limitations.*

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within ~~nine~~ two months as provided in G.S. 1-54.1."

Sec. 8. Sections 3 and 4 of this act become effective on and after January 1, 1996. All other sections of this act become effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

AN ACT TO TRANSFER RESPONSIBILITY FOR COLLECTING THE REMAINDER OF THE GROSS PREMIUMS TAX FROM THE DEPARTMENT OF INSURANCE TO THE DEPARTMENT OF REVENUE AND TO CLARIFY RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.9 reads as rewritten:

"§ 105-228.9. ~~Commissioner of Insurance to administer portions of Article-~~ Cross-reference to other taxes relating to insurance.

~~Notwithstanding any other provision of this Article, the taxes levied in this Article on self-insurers and the additional tax levied in this Article at the rate of one and thirty-three hundredths percent (1.33%) on contracts of insurance applicable to fire and lightning coverage shall be administered solely by the Commissioner of Insurance, who~~ The following taxes relating to insurance are collected by the Commissioner of Insurance:

(1) Surplus lines tax, G.S. 58-21-85.

(2) Tax on risk retention groups not chartered in this State, G.S. 58-22-20(3).

(3) Tax on person procuring insurance directly with an unlicensed insurer, G.S. 58-28-5(b).

The Commissioner of Insurance has the same authority and responsibility in administering those portions of this Article taxes as the Secretary of Revenue has in administering the other portions of this Article."

Sec. 2. G.S. 105-228.5 reads as rewritten:

"§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. -- A tax is levied in this section on insurers, Article 65 corporations, and self-insurers. An insurer or Article 65 corporation that is subject to the tax levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. --

(1) Insurers. -- The tax imposed by this section on an insurer shall be measured by gross premiums from business done in this State during the preceding calendar year.

(2) Additional Local Fire and Lightning Rate. -- The additional tax imposed by subdivision (d)(4) of this section shall be measured by gross premiums from business done in fire districts in this State during the preceding calendar year. For the purpose of this section, the term 'fire district' has the meaning provided in G.S. 58-84-5.

(3) Article 65 Corporations. -- The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year.

(4) Self-insurers. -- The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the

self-insurer's payroll for the previous calendar year as determined under Article 2 of Chapter 97 of the General Statutes modified by the self-insurer's approved experience modifier.

(b1) Calculation of Tax Base. -- In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, means all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. -- Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

- (1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) ~~Tax Rates.~~ Rates; Disposition. --

- (1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
- (2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums collected on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
- (3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (~~1.33%~~); ~~twenty-five~~ (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Rural Volunteer Fire Department Fund established in ~~Articles 84 through 88~~ Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.
- (4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.
- (5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund.

(e) Report and Payment. -- Each insurer, Article 65 corporation, and self-insurer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The

report shall be verified by the oath of the official or other representative responsible for transmitting it; the taxes imposed by this section shall be remitted to the Secretary with the report.

In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1.

(f) Installment Payments Required. -- Insurers, Article 65 corporations, and self-insurers that are subject to the tax imposed by this section and have a premium tax ~~liability~~ liability, not including the additional local fire and lightning tax, of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear ~~interest, as a penalty,~~ interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. -- This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members."

Sec. 3. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term "insurance company" does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, additional taxes imposed by G.S. 105-228.8 and the additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4) shall be disregarded."

Sec. 4. G.S. 58-84-1 reads as rewritten:

~~"§ 58-84-1. Insurance companies to report premiums collected. Fire and lightning insurance report.~~

~~Every insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city~~

~~council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars (\$1,000) or more, and which enforces the fire laws to the satisfaction of the Insurance Commissioner, shall return to the Insurance Commissioner of the State of North Carolina. Every insurance company doing business in a fire district in this State shall report to the Secretary of Revenue by March 15 of each year a just and true account of all premiums collected and received from all fire and lightning insurance business done within the limits of such towns and cities during the year ending December 31, or such portion thereof as it may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within 60 days from and after the thirty-first day of December of each year, each fire district during the preceding calendar year and shall pay the tax levied in G.S. 105-228.5(d)(4). The Secretary of Revenue shall provide the Commissioner the reports filed pursuant to this section and shall credit the net proceeds of the tax to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."~~

Sec. 5. G.S. 58-84-5 reads as rewritten:

"§ 58-84-5. *Definitions.*

~~As used in Articles 84 through 88 of this Chapter, the words "city," "cities," "town" or "towns" shall also include and mean sanitary districts, school districts, rural fire districts and any other political subdivisions of the State having an organized fire department.~~

~~Whenever the clerk of any city or town is required to perform any act pursuant to Articles 84 through 88 of this Chapter, clerk shall mean the person so designated by the governing body or committee where there is no clerk.~~

The following definitions apply in Articles 84 through 88 of this Chapter:

- (1) City. -- A fire district.
- (2) Clerk. -- The clerk of a fire district or, if there is no clerk, the person so designated by the governing body of the fire district.
- (3) Fire district. -- Any political subdivision of the State that meets all of the following conditions:
 - a. It has an organized fire department under the control of its governing body.
 - b. Its fire department has apparatus and equipment that is in serviceable condition for fire duty and is valued at one thousand dollars (\$1,000) or more.
 - c. It enforces the fire laws to the satisfaction of the Commissioner.
- (4) Town. -- A fire district."

Sec. 6. G.S. 58-84-10, 58-84-15, and 58-84-20 are repealed.

Sec. 7. G.S. 58-84-25 reads as rewritten:

"§ 58-84-25. *Disbursement of funds by Insurance Commissioner.*

The Insurance Commissioner shall deduct the sum of three percent (3%) from the money so collected from the insurance companies, corporations, or association, as aforesaid, tax proceeds credited to the Department pursuant to G.S. 105-228.5(d)(4) and pay the same over to the treasurer of the State

Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the ~~money so collected from the insurance companies, corporations, or associations, as aforesaid, tax~~ proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the towns and cities in the State having or that may hereafter have organized fire departments as provided in this Article, said Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each town or city to be held by him fire district in proportion to the amount of business done in the fire district. These funds shall be held by the treasurer as a separate and distinct fund, and he fund. The fire district shall immediately pay the same funds to the treasurer of the local board of trustees upon his the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, fire district, which board shall be composed of five members, residents of said city or town the fire district as hereinafter provided for, to be used by it for the purposes as named provided in G.S. 58-84-35."

Sec. 8. G.S. 58-22-15(a) reads as rewritten:

"(a) A risk retention group seeking to be chartered in this State must be chartered and licensed as a liability insurance company under Article 7 of this Chapter and, except as provided elsewhere in this Article, must comply with all of the laws and rules applicable to such insurers chartered and licensed in this State and with G.S. 58-22-20 to the extent such requirements are not a limitation on laws, administrative rules, or requirements of this State. As a chartered and licensed liability insurance company, the group is subject to the taxes imposed in Article 8B of Chapter 105 of the General Statutes."

Sec. 9. G.S. 58-22-20(3) reads as rewritten:

"(3) Taxation.

- a. All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same payment procedures and to the same interest, fines, and penalties for nonpayment as those applicable to surplus lines insurance under Article 21 of this Chapter. Premiums paid by purchasing groups are, however, taxed as provided in G.S. 58-22-35(b).
- b. To the extent licensed agents or brokers are utilized pursuant to G.S. 58-22-60, they shall report and pay the taxes for the premiums for risks that they have placed with or on behalf of a risk retention group not chartered in this State. Such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the Commissioner, as provided in G.S. 58-2-185. These records shall, for each

policy and each kind of insurance provided thereunder, include the following:

1. The limit of liability;
 2. The time period covered;
 3. The effective date;
 4. The name of the risk retention group that issued the policy;
 5. The gross premium charged; and
 6. The amount of return premiums, if any.
- c. To the extent that insurance agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State. Each risk retention group shall report to the Commissioner all premiums paid to it for risks insured within the State. "

Sec. 10. G.S. 58-22-35(b) reads as rewritten:

"(b) Taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes on similar coverage from a similar insurance source by other ~~insureds; and~~ insureds. For example, coverage provided by a surplus lines licensee is taxed under Article 21 of this Chapter, coverage provided by an insurance company is taxed under Article 8B of Chapter 105 of the General Statutes, and coverage provided by an unlicensed insurer is taxed under G.S. 58-28-5(b).
- (2) Paid first by such insurance source, and if not by such source then by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such group then by each of its members."

Sec. 11. G.S. 58-6-20 reads as rewritten:

"§ 58-6-20. *Policyholders to furnish information.*

~~To enable the Commissioner the better to enforce the payment of the taxes imposed by Articles 1 through 64 of this Chapter and by G.S. 105-228.5 every~~ Every corporation, firm, or individual doing business in the State shall, upon demand request of the Commissioner, furnish to him, upon blanks to be provided by him, a statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the Commissioner calls for, or shall file an affidavit with the Commissioner that all their insurance is placed in companies licensed to do business in this State. the Commissioner any information the Commissioner considers necessary to enable the Commissioner to enforce the payment of a tax levied in this Chapter."

Sec. 12. G.S. 58-45-80 reads as rewritten:

"§ 58-45-80. *Premium taxes to be paid through Association to Commissioner.*

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as

collecting agent for its member companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes."

Sec. 13. G.S. 58-46-45 reads as rewritten:

"§ 58-46-45. ~~Premium taxes to be paid through Association to Commissioner.~~
Association.

All premium taxes due on insurance written under this Article shall be remitted by each insurer to the Association; and the Association, as collecting agent for its member companies, shall forward all such taxes to the ~~Commissioner~~ Secretary of Revenue as provided in Article 8B of Chapter 105 of the General Statutes."

Sec. 14. G.S. 58-47-30(d) reads as rewritten:

"(d) ~~The fund shall be subject to the premium tax law as stated in North Carolina G.S. 105-228.5.~~ is an insurer for the purposes of Article 8B of Chapter 105 of the General Statutes and assessments paid to the fund are subject to the tax levied in that Article."

Sec. 15. Position Number 3927-0000-0007-023, which is an Office Assistant III, Grade 57, is transferred from the Department of Insurance to the Department of Revenue to implement this act. After the transfer, the position shall continue to be funded from the Insurance Regulatory Fund established in G.S. 58-6-25.

Sec. 16. This act becomes effective January 1, 1997. This act does not obligate the General Assembly to appropriate funds.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1166

CHAPTER 748

AN ACT TO MODIFY THE REQUIRED DISCLOSURE STATEMENT AND ELIMINATE DUPLICATIVE REPORTING REQUIREMENTS UNDER THE CHARITABLE SOLICITATIONS ACT AND TO MODIFY AND CLARIFY REQUIREMENTS FOR NONGOVERNMENTAL ENTITIES' ACCOUNTABILITY FOR STATE GRANTS.

The General Assembly of North Carolina enacts:

PART I. AMEND CHARITABLE SOLICITATIONS ACT

Section 1.1. G.S. 131F-9(c) reads as rewritten:

"(c) Printed Disclosure. -- Every charitable organization or sponsor that is required to obtain a license under G.S. 131F-5 shall conspicuously display in capital letters in bold type of a minimum size ~~10~~ nine points, the following statement on every printed solicitation, written confirmation, receipt, or reminder of a contribution:

~~'A COPY OF THE LICENSE TO SOLICIT CHARITABLE CONTRIBUTIONS AS A CHARITABLE ORGANIZATION OR SPONSOR AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL,~~

~~OR RECOMMENDATION BY THE STATE.~~ 'Financial information about this organization and a copy of its license are available from the State Solicitation Licensing Branch at [telephone number]. The license is not an endorsement by the State.'

The statement shall be made conspicuous by use of one or more of the following: underlining, a border, or bold type. When the solicitation consists of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page."

Sec. 1.2. G.S. 131F-17(a)(3) reads as rewritten:

"(3) In addition to the information required by subdivision (1) of this subsection, any written confirmation, receipt, or reminder of contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state in ~~capital letters in bold type~~ of a minimum of 10 nine points:

~~'A COPY OF THE LICENSE AND FINANCIAL INFORMATION OF THE SOLICITOR MAY BE OBTAINED FROM THE DEPARTMENT OF HUMAN RESOURCES, SOLICITATION LICENSING BRANCH, BY CALLING (919) 733-4510. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE.'~~

'Financial information about the solicitor and a copy of its license are available from the State Solicitation Licensing Branch at [telephone number]. The license is not an endorsement by the State.'

The statement shall be made conspicuous by use of one or more of the following: underlining, a border, or bold type. When the solicitation materials consist of more than one piece, the statement shall be displayed prominently in the solicitation materials, but not necessarily on every page."

Sec. 1.3. G.S. 131F-6 reads as rewritten:

"§ 131F-6. *Information required for licensure.*

(a) Initial Information Required. -- The initial application for a license for a charitable organization or sponsor shall be submitted on a form provided by the Department, signed under oath by the treasurer or chief fiscal officer of the charitable organization or sponsor, and shall include the following:

- (1) The name of the charitable organization or sponsor, the purpose for which it is organized, the name under which it intends to solicit contributions, and the purpose for which the contributions to be solicited will be used.
- (2) The principal street address and telephone number of the charitable organization or sponsor and the street address and telephone numbers of any offices in this State or, if the charitable organization or sponsor does not maintain an office in this State, the name, street address, and telephone number of the person who has custody of its financial records. The parent organization that files a consolidated registration statement under G.S. 131F-7 on behalf of its chapters, branches, or affiliates shall additionally

provide the street addresses and telephone numbers of all of its locations in this State.

- (3) The names and street addresses of the officers, directors, trustees, and the salaried executive personnel.
- (4) The date when the charitable organization's or sponsor's fiscal year ends.
- (5) A list or description of the major program activities.
- (6) The names, street addresses, and telephone numbers of the individuals or officers who have final responsibility for the custody of the contributions and who will be responsible for the final distribution of the contributions.
- (7) The name of the individuals or officers who are in charge of any solicitation activities.
- (8) A financial report for the immediately preceding fiscal year upon a form provided by the Department. The report shall include the following:
 - a. The balance sheet.
 - b. A statement of support, revenue, and expenses, and any change in the fund balance.
 - ~~c. The names and addresses of any fund-raising consultant, solicitor, and coventurer used, if any, and the amounts received from each of them, if any.~~
 - d. A statement of expenses in the following categories:
 1. Program.
 2. Management and general.
 3. Fund-raising.
- (9) In substitution for the financial report information described in ~~subdivision (8)~~ subdivisions (3), (4), (5), (6), and (8) of this subsection, a charitable organization or sponsor may submit ~~submit, at the time the application is filed,~~ a copy of its Internal Revenue Service Form 990 and Schedule A filed for the preceding fiscal year, or a copy of its Form 990-EZ filed for the preceding fiscal year.
- (10) A charitable organization or sponsor may include a financial report which has been audited by an independent certified public accountant or an audit with opinion by an independent certified public accountant. In the event that a charitable organization or sponsor elects to file this, this optional filing shall be noted in the Department's annual report submitted under G.S. 131F-30.
- (11) A newly organized charitable organization or sponsor with no financial history shall file a budget for the current fiscal year.
- (12) A statement indicating all of the following:
 - a. Whether or not the charitable organization or sponsor is authorized by any other state to solicit contributions.
 - b. Whether or not the charitable organization or sponsor or any of its officers, directors, trustees, or salaried executive personnel have been enjoined in any jurisdiction from soliciting contributions or have been found to have engaged in

unlawful practices in the solicitation of contributions or administration of charitable assets.

- c. Whether or not the charitable organization or sponsor has had its authority denied, suspended, or revoked by any governmental agency, together with the reasons for the denial, suspension, or revocation.
 - d. Whether or not the charitable organization or sponsor has voluntarily entered into an assurance of voluntary compliance or agreement similar to that set forth in G.S. 131F-24(c), together with a copy of that agreement.
- (13) The names, street addresses, and telephone numbers of any solicitor, fund-raising consultant, or coventurer who is acting or has agreed to act on behalf of the charitable organization or sponsor, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other compensation to be paid the fund-raising consultant, solicitor, or ~~coventurer~~, coventurer, and the amounts received from each of them, if any.
- (14) With initial licensing only, when and where the organization was established, the tax-exempt status of the organization, and a copy of any federal tax exemption determination letter. If the charitable organization or sponsor has not received a federal tax exemption determination letter at the time of initial licensing, a copy of the determination shall be filed with the Department within 30 days after receipt of the determination by the charitable organization or sponsor. If the organization is subsequently notified by the Internal Revenue Service of any challenge to its continued entitlement to federal tax exemption, the charitable organization or sponsor shall notify the Department of this fact within 30 days after receipt.

(b) **Renewal Information Required.** -- A license shall be renewed on an annual basis. The charitable organization or sponsor shall submit any changes in the information submitted from the initial application."

PART II. NONPROFITS/STATE FUNDS ACCOUNTABILITY

Sec. 2.1. G.S. 143-6.1 reads as rewritten:

"§ 143-6.1. ~~Information from private organizations receiving State funds; information from State departments and agencies providing State funds. Reports on use of State funds by non-State entities.~~

(a) Disbursement and Use of State Funds. -- Every corporation, organization, and institution ~~which receives, uses~~ that receives, uses, or expends any State funds shall use or expend ~~such~~ the funds only for the purposes for which ~~such State funds~~ they were appropriated by the General Assembly or collected by the State. State funds include federal funds that flow through the State. For the purposes of this section, the term 'grantee' means a corporation, organization, or institution that receives, uses, or expends any State funds. The State may not disburse State funds appropriated by the General Assembly to any grantee or collected by the State for use by any grantee if that grantee has failed to provide any reports or financial information previously required by this section. In addition,

before disbursing the funds, the Office of State Budget and Management may require the grantee to supply information demonstrating that the grantee is capable of managing the funds in accordance with law and has established adequate financial procedures and controls. All financial statements furnished to the State Auditor pursuant to this section, and any audits or other reports prepared by the State Auditor, are public records.

(b) State Agency Reports. -- A State agency that receives State funds and then disburses the State funds to a grantee must identify the grantee to the State Auditor, unless the funds were for the purchase of goods and services. The State agency must submit documents to the State Auditor in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors performing audits.

(c) Grantee Receipt and Expenditure Reports. -- A grantee that receives, uses, or expends between fifteen thousand dollars (\$15,000) and one hundred thousand dollars (\$100,000) in State funds annually, except when the funds are for the purchase of goods or services, must file annually with the State agency that disbursed the funds a sworn accounting of receipts and expenditures of the State funds. This accounting must be attested to by the treasurer of the grantee and one other authorizing officer of the grantee. The accounting must be filed within six months after the end of the grantee's fiscal year in which the State funds were received. The accounting shall be in the form required by the disbursing agency. Each State agency shall develop a format for these accountings and shall obtain the State Auditor's approval of the format.

(d) Grantee Audit Reports. -- A grantee that receives, uses, or expends State funds in the amount of one hundred thousand dollars (\$100,000) or more annually, except when the funds are for the purchase of goods or services, must file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor. The financial statement must be audited in accordance with standards prescribed by the State Auditor to assure that State funds are used for the purposes provided by law.

(e) Federal Reporting Requirements. -- Federal law may require a grantee to make additional reports with respect to funds for which reports are required under this section. Notwithstanding the provisions of this section, a grantee may satisfy the reporting requirements of subsection (c) of this section by submitting a copy of the report required under federal law with respect to the same funds or by submitting a copy of the report described in subsection (d) of this section.

(f) Audit Oversight. -- The State Auditor has audit oversight, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee that receives, uses, or expends State funds. Such a grantee must, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of State funds. The grantee must furnish any additional financial or budgetary information requested by the State Auditor.

Each corporation, organization, and institution which receives, uses or expends State funds in the amount of twenty-five thousand dollars (\$25,000)

~~or more annually, except when the funds are for the purchase of goods or services, shall file annually with the State Auditor and with the Joint Legislative Commission on Governmental Operations financial statements for that year in which twenty-five thousand dollars (\$25,000) or more in State funds were received, used, or expended. These financial statements shall be audited in accordance with the auditing standards prescribed by the State Auditor, and the audit report shall be received by the State Auditor within six months after the end of the private organization's year in which twenty-five thousand dollars (\$25,000) or more were received, used, or expended. Each corporation, organization, and institution shall furnish to the State Auditor for audit all books, records and other information as shall be necessary for the State Auditor to account fully for the use and expenditure of State funds. Each such corporation, organization, and institution shall furnish such additional financial or budgetary information as shall be requested by the State Auditor or by the Joint Legislative Commission on Governmental Operations. The State shall not disburse State funds appropriated by the General Assembly or collected by the State for use by any corporation, organization, or institution until that corporation, organization, or institution has provided all the reports and financial information required by this section. All financial statements furnished to the State Auditor or to the Joint Legislative Commission on Governmental Operations pursuant to this section, and any audits or other reports prepared by the State Auditor, shall be public records.~~

~~Each State department and agency shall identify to the State Auditor each corporation, organization, and institution to which State funds received by the department or agency have been provided, except for the purchase of goods and services, and submit documents to the State Auditor for approval in a prescribed format describing standards of compliance and suggested audit procedures sufficient to give adequate direction to independent auditors performing audits.~~

~~The receipt, use or expenditure of State funds by a corporation, organization, and institution shall not, in and of itself, make or constitute such corporation, organization, or institution a State agency."~~

Sec. 2.2. Section 11 of Chapter 324 of the 1995 Session Laws is repealed.

PART III. EFFECTIVE DATES

Sec. 3.1. Section 1.3 of Part I and Part II of this act become effective July 1, 1996. The remainder of this act is effective upon ratification. Effective until January 1, 1998, a document that complies with the requirements of G.S. 131F-9(c) or G.S. 131F-17(a)(3) as in effect before ratification of this act shall be considered to comply with the requirements of the respective statute as amended by this act.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1237

CHAPTER 749

AN ACT TO ENSURE AREA AUTHORITY FINANCIAL STABILITY
AND DELIVERY OF ADEQUATE SERVICES TO CLIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-115 reads as rewritten:

"§ 122C-115. Powers and duties of counties and cities.

(a) Except as provided in G.S. 153A-77, a county shall provide mental health, developmental disabilities, and substance abuse services through an area authority.

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

(d) Counties shall not reduce county appropriations and expenditures for area authorities because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority."

Sec. 2. G.S. 122C-117 reads as rewritten:

"§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
- (2) Provide services to clients in the catchment area;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and
- (7) Appoint an area director, director, chosen through a search committee on which the Secretary of the Department of Human Resources or the Secretary's designee serves as a nonvoting member.

(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board."

Sec. 3. G.S. 122C-118 reads as rewritten:

"§ 122C-118. *Structure of area board.*

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

(1) In a single-county area, by the board of county commissioners;

(2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(c1) The group of county commissioners authorized to make appointments to the area board shall declare vacant the office of a member of the area board who does not attend three scheduled meetings without justifiable excuse within a 12-month period.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(d1) Whenever a vacancy occurs on the board, it shall be filled within 120 days.

(e) The area board shall include:

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;

(2) At least ~~two physicians~~ one physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina ~~and who, when possible, one of these physicians should be~~ is certified as having completed a residency in psychiatry;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each, either a primary consumer or an individual from a citizens' organization, representing the interests of individuals with:

a. Mental illness; and

b. Developmental disabilities.

- (4.1) At least one primary consumer ~~each~~ presently and openly in recovery ~~and~~ representing the interests of individuals suffering from alcoholism or other drug abuse. ~~with:~~

- ~~a. Alcoholism; and~~
- ~~b. Drug abuse.~~

- (5) At least one family consumer each representing the interest of individuals with:

- a. Mental illness;
- b. Developmental disabilities; and
- c. Alcoholism; and Alcoholism or other drug abuse.
- ~~d. Drug abuse.~~

- (6) At least one attorney licensed to practice in North Carolina.

- (7) At least one member who has experience in finance and can understand and interpret audits and other financial reports.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years."

Sec. 4. G.S. 122C-119 reads as rewritten:

"§ 122C-119. *Organization of area board.*

- (a) The area board shall meet at least six times per year.

(b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.

(d) The area board shall establish a finance committee that shall meet at least six times per year to review the financial strength of the area program. The finance committee shall have a minimum of three members, two of whom have expertise in budgeting and fiscal control. If the area board so chooses, the entire area board may function as the finance committee; however, its required meetings as a finance committee shall be distinct from its meetings as an area board."

Sec. 5. G.S. 122C-119.1 reads as rewritten:

"§ 122C-119.1. *Area Authority board members' training.*

All members of the governing body for an area ~~authority's board of directors~~ authority shall receive initial orientation on board members' responsibilities and training provided by the ~~Division of Mental Health, Developmental Disabilities, and Substance Abuse Services~~ of the Department of Human Resources in fiscal management, budget development, and fiscal accountability. A member's refusal to be trained ~~may~~ shall be grounds for removal from the board."

Sec. 6. G.S. 122C-124 reads as rewritten:

"§ 122C-124. *Area Authority funding suspended.*

(a) The Secretary of the Department of Human Resources Resources, after providing written notification of its intent to the area board, may suspend funding to any area authority with a revenue or expenditure budget variance of ten percent (10%) or a significant deterioration in the fund balance of the authority's general fund. A significant deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the balance from one fiscal year to the next without the prior approval of the Department. Area authorities shall report any such revenue or expenditure variance or deterioration in fund balance to the Department of Human Resources within 30 days of its occurrence. In the event that funding is suspended, the Department of Human Resources Department, after providing written notification of its intent to the area board and after providing the area authority an opportunity to be heard, may contract with, and make payments of Department funds on an interim basis directly to, a contract provider of the area authority to avoid the disruption of direct services to clients.

(b) If the Secretary determines that an area authority is not providing minimally adequate services, in accordance with its annual service plan, to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may withhold funding for the particular service or services in question from the area authority and insure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

(c) Upon suspension of funding, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances. finances or delivery of services."

Sec. 7. G.S. 122C-125 reads as rewritten:

" 122C-125. *Area Authority financial failure; State assumption of financial control.*

At any time that the Secretary of the Department of Human Resources determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area

authority. The Secretary shall adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

Upon assumption of financial control, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's finances."

Sec. 8. Part 2 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-125.1. Area Authority failure to provide services; State assumption of service delivery.

At any time that the Secretary determines that an area authority is not providing minimally adequate services, in accordance with its annual service plan, to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area board and providing the area authority an opportunity to be heard, may assume control of the particular service in question or of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers in G.S. 122C-117 and all other service delivery powers conferred in the area authority by law as they pertain to this service. County funding of the area authority shall continue when the State has assumed control of a service area or of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority.

Upon assumption of control of service delivery, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's delivery of services."

Sec. 9. G.S. 122C-126 reads as rewritten:

"§ 122C-126. Area authority caretakers appointed.

In the event that an area authority fails to comply with the corrective plan of action required pursuant to G.S. 122C-124 when funding is ~~suspended or~~ suspended, pursuant to G.S. 122C-125 when the State assumes financial control of the area authority, or pursuant to G.S. 122C-125.1 when the State assumes control of service delivery, the Secretary of the Department of Human Resources Secretary, after providing written notification of the Secretary's intent to the area board, shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the director of the area authority and of the board of directors and the caretaker board to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred

on the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the contract of any director when it appoints a caretaker administrator. The Administrative Procedure Act shall apply to any such decision. Neither party to any such contract shall be entitled to damages.

After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority."

Sec. 10. Reductions in fiscal year 1995-96 appropriations as a result of reductions in the Social Services Block Grant federal funds shall be absorbed by the Department of Human Resources.

Sec. 11. This section and Section 10 of this act become effective July 1, 1996. The remainder of this act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1413

CHAPTER 750

AN ACT TO ALLOW MECKLENBURG COUNTY TO ACQUIRE
PROPERTY FOR A MAGNET TECHNICAL HIGH SCHOOL FOR
USE BY ITS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of

commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection or repair of school buildings upon sites owned in fee simple or leased with an option to purchase by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Currituck, Duplin, Edgecombe, Forsyth, Franklin, Greene, Guilford, Halifax, Harnett, Haywood, Iredell, Jackson, Johnston, Lee, Macon, Madison, Mecklenburg, Moore, Nash, Orange, Pasquotank, Pender, Randolph, Richmond, Rowan, Sampson, Scotland, Stanly, Union, Wake, and Watauga Counties."

Sec. 2. The authority granted in Section 1 of this act applies only with respect to a planned magnet technical high school project that would have a comprehensive program of study designed for individuals who intend to pursue a postsecondary degree as well as those who plan to go directly into employment at the end of high school.

Sec. 3. This act applies only to Mecklenburg County and Guilford County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.B. 1458

CHAPTER 751

AN ACT TO RAISE THE PENALTY FOR BURNING OF RELIGIOUS STRUCTURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-49 is amended by adding a new subsection to read:

"(b1) Any person who willfully and maliciously damages, aids, counsels, or procures the damaging of any church, chapel, synagogue, mosque, masjid, or other building of worship by the use of any explosive or incendiary device or material is guilty of a Class E felony."

Sec. 2. G.S. 14-62 reads as rewritten:

"§ 14-62. ~~Burning of churches and certain other buildings.~~

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of, any uninhabited house, ~~any church, chapel or meetinghouse,~~ or any stable, coach house, outhouse, warehouse, office, shop, mill, barn or granary, or any building, structure or erection used or intended to be used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, he shall be punished as a Class F felon."

Sec. 3. Article 15 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-62.2. *Burning of churches and certain other religious buildings.*

If any person shall wantonly and willfully set fire to or burn or cause to be burned, or aid, counsel or procure the burning of any church, chapel, or meetinghouse, the person shall be punished as a Class E felon."

Sec. 4. This act is effective upon ratification and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1146

CHAPTER 752

AN ACT TO REPEAL THE LAW PROHIBITING LICENSED REINSURERS FROM ASSUMING REINSURANCE FROM NONADMITTED INSURERS AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON INSURANCE AND INSURANCE-RELATED ISSUES AND TO MAKE CLARIFYING AMENDMENTS IN THE 1995 ASSUMPTION REINSURANCE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-43-20 is repealed.

Sec. 2. G.S. 58-10-25 reads as rewritten:

"§ 58-10-25. *Definitions.*

As used in this Part:

- (1) Assuming insurer. -- The insurer that acquires an insurance obligation or risk from the transferring insurer under an assumption reinsurance agreement.
- (2) Assumption reinsurance agreement. -- Any ~~contract~~ contract, arrangement, or plan that:
 - a. Transfers insurance obligations or risks of existing or in-force policies from a transferring insurer to an assuming insurer.
 - b. Is intended to effect a novation of ~~the transferred policy~~ policies with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the ~~contracts~~ policies are extinguished.
- (3) Home service business. -- Insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.
- (4) Policy. -- A contract of insurance as defined in G.S. 58-1-10.
- (5) Policyholder. -- Any person that has the right to terminate or otherwise alter the terms of a policy. It includes any group policy certificate holder whose certificate is in force on the proposed effective date of the assumption, if the certificate holder has the right to keep the certificate in force without any change in benefits after termination of the group policy. The right to keep the

certificate in force referred to in this subdivision does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act ('COBRA'), section 601, et seq., of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1161, et seq.

- (6) Transferring insurer. -- The insurer that transfers an insurance obligation or risk to an assuming insurer under an assumption reinsurance agreement.

(b) For the purposes of this Part, a 'novation' does not require the formation of a new policy or the amendment of an existing policy between the assuming insurer and the policyholder."

Sec. 3. This act is effective upon ratification."

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1183

CHAPTER 753

AN ACT REGARDING THE JURISDICTION OF THE UTILITIES COMMISSION WITH REGARD TO THE RESALE OF WATER OR SEWER SERVICE IN APARTMENTS, CONDOMINIUMS, AND SIMILAR PLACES AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110 is amended by adding a new subsection to read:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, the Commission shall be authorized, consistent with the public interest, to adopt procedures for the purpose of allowing resale of water and sewer service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission) at a rate or charge which does not exceed the actual purchase price of such service to the provider plus a reasonable administrative fee. The Commission shall issue rules to implement the services authorized by this subsection and, notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing such services and their customers under any other provision of law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1263

CHAPTER 754

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF
PUBLIC ROADS IN NORTHAMPTON COUNTY AND TO RESTRICT
HUNTING ON THE LAND OF ANOTHER IN MACON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird with a firearm on, from, or across the right-of-way of any public road or highway in Northampton County.

Sec. 2. It is unlawful to hunt, take, or kill any wild animal or wild bird on the real property of another in Macon County without the written permission of the owner or lessee of the property, regardless of whether the property is posted. Written permission in satisfaction of this section shall be in the hunter's possession, may be valid for no more than one year, and may be revoked at any time at the discretion of the owner or lessee of the property.

Sec. 3. It is unlawful for a person other than the owner or lawful resident to discharge any weapon within 200 yards of a dwelling or outbuilding in Macon County without the express permission of the property owner or lessee.

Sec. 4. Violation of this act is a Class 3 misdemeanor.

Sec. 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 6. Section 1 of this act applies only to Northampton County. Sections 2 and 3 of this act apply only to Macon County.

Sec. 7. This act becomes effective December 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1386

CHAPTER 755

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM TO
ALLOW PAYMENT OF ASSESSMENTS OVER A LONGER PERIOD
AND AT A REDUCED INTEREST RATE IN CASES OF SPECIAL
FINANCIAL HARDSHIP.

The General Assembly of North Carolina enacts:

Section 1. Section 77 of the Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is further amended by adding a new subsection to read:

"(22.1) (a) Notwithstanding subsection 22 of this section, the City Council may allow payment of assessments over an extended period of time, not to exceed 20 years, and at a reduced interest rate where the property owner demonstrates special financial hardship. In case of an assessment for water or sewer improvements, the special payment provisions shall apply until the earlier of (i) when the owner makes application for connection to

receive water or sewer service; or (ii) such time as a fee interest in the property is transferred or conveyed, whether voluntarily or involuntarily, and whether during the lifetime of the owner or by devise or descent. In case of an assessment for street paving, sidewalks, or other improvements, the special payment provisions shall apply until such time as a fee interest in the property is transferred or conveyed, whether voluntarily or involuntarily, and whether during the lifetime of the owner or by devise or descent. At the time of application for connection or the time of transfer or conveyance, as applicable, the unpaid balance of the assessment shall become immediately due and payable in full. For purposes of this subsection, a lease, mortgage, or deed of trust shall not be considered as a transfer or conveyance of a fee interest in the property. In no event may the due date of the unpaid balance of the assessment extend beyond the lifetime of the owner.

(b) As a prerequisite to exercising the authority granted by this subsection, the City Council shall define what constitutes a special financial hardship, and may amend this definition from time to time.

(c) The authority granted by this subsection shall be exercised only upon written application of the owner of property subject to the assessment. The application must be filed with the City Clerk no later than 15 days after confirmation of the assessment roll. The application shall be on a form approved by the City Council. The application shall contain such information and documentation pertaining to special financial hardship, and such other information, as the City Council may require.

(d) The City Council may delegate authority to the City Manager or designee of the City Manager to approve or deny any application submitted pursuant to this section. If any such application shall be approved by the City, the City Clerk shall mark upon the confirmed assessment roll such words as shall indicate such approval by the City, the special payment provisions and the date and time of the approval."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.B. 1294

CHAPTER 756

AN ACT TO CONFORM THE MOTOR VEHICLE LAWS TO THE FEDERAL DEREGULATION OF TRUCKING AND TO MAKE TECHNICAL CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-1 reads as rewritten:

"§ 20-1. ~~Division of Motor Vehicles of the Department of Transportation; powers and duties, established.~~

~~The Department of Motor Vehicles is hereby redesignated the Division of Motor Vehicles of the Department of Transportation. The Division of Motor Vehicles shall have the same powers and duties as were held by the Department of Motor Vehicles except as otherwise provided in this Article.~~

~~All powers, duties and functions relating to the collection of motor fuel taxes and the collection of the gasoline and oil inspection taxes shall continue to be vested in and exercised by the Secretary of Revenue, and wherever it is now provided by law that reports shall be filed with the Secretary of Revenue, or Department of Revenue, as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the Department of Revenue and the Commissioner of Motor Vehicles shall make available to the Secretary of Revenue all information from files of the Division of Motor Vehicles which the Secretary of Revenue may request to enable him to better enforce the law with respect to the collection of such taxes. Nothing in this Article shall deprive the Utilities Commission of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers. Transportation is established. This Chapter sets out the powers and duties of the Division."~~

Sec. 2. G.S. 20-4.01(27)c. reads as rewritten:

"c. Common carriers of passengers. -- Vehicles operated under a franchise certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons ~~or property~~ for compensation."

Sec. 3. G.S. 20-4.01 is amended by adding the following subdivisions in the appropriate alphabetical order to read:

"(11a) For-Hire Motor Carrier. -- A person who transports passengers or property by motor vehicle for compensation.

(21b) Motor Carrier. -- A for-hire motor carrier or a private motor carrier.

(29a) Private Motor Carrier. -- A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier."

Sec. 4. G.S. 20-4.01(31) reads as rewritten:

"(31) Property-Hauling Vehicles. --

a. ~~Exempt for-hire vehicles.~~ -- Vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the Utilities Commission or by the Interstate Commerce Commission; provided, that the term "for hire" shall include every arrangement by which the owner of a vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. ~~The transportation of farm crops or products, including logs, bark, pulp, and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.~~

- ~~2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor, or trailer in a for-hire operation.~~
- ~~3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.~~
- ~~4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.~~
- ~~5. The transportation of fuel for the exclusive use of the public schools of the State.~~
- ~~6. Vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract, or the extension or renewal of such contract.~~
- ~~7. Vehicles leased for a term of one year or more to the same person when used exclusively by such person in transporting his own property.~~
- b. ~~Common carrier of property vehicles. -- Vehicles used for the transportation of property certified by the Utilities Commission or the Interstate Commerce Commission as common carriers.~~
- c. ~~Private hauler vehicles. -- Vehicles used for the transportation of property not falling within one of the above-defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used for camping activities shall be classified as private passenger vehicles.~~
- d. ~~Semitrailers. -- Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.~~
- e. ~~Trailers. -- Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.~~
- f. ~~Contract carrier of property vehicles. -- Vehicles used for the transportation of property under a franchise permit of a regulated contract carrier issued by the Utilities Commission or the Interstate Commerce Commission."~~

Sec. 5. G.S. 20-37.16(e) reads as rewritten:

"(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial

drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

- (1) Vehicles owned or operated by the Department of Defense, including the National Guard, while they are driven by active duty military personnel, or members of the National Guard when on active duty, in the pursuit of military ~~purposes; purposes.~~
- (2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or property or to execute emergency governmental ~~functions; and functions.~~
- (3) ~~Farm vehicles that meet~~ A farm vehicle that meets all of the following criteria:
 - a. ~~Controlled~~ Is controlled and operated by the farmer or the farmer's employee and used exclusively for farm ~~use; use.~~
 - b. ~~Used~~ Is used to transport either agricultural products, farm machinery, or farm supplies, both to or from a ~~farm; farm.~~
 - c. ~~Not~~ Is not used in the operations of a ~~common or contract for-hire motor carrier; and carrier.~~
 - d. ~~Used~~ Is used within 150 miles of the farmer's farm.

A farm vehicle includes a forestry vehicle that meets the listed criteria when applied to the forestry operation."

Sec. 6. G.S. 20-64.1 is repealed.

Sec. 7. G.S. 20-87(1) reads as rewritten:

"(1) ~~Common Carrier, Contract Carriers and Exempt For-Hire Passenger Carrier Vehicles. -- For-hire passenger vehicles shall be taxed at the rate of~~ The fee for a passenger vehicle that is operated for compensation and has a capacity of 15 passengers or less is seventy-eight dollars (\$78.00) per year for each vehicle of ~~fifteen-passenger capacity or less and vehicles of over fifteen-passenger capacity shall be classified as buses and shall be taxed at a rate of (\$78.00).~~ The fee for a passenger vehicle that is operated for compensation and has a capacity of more than 15 passengers is one dollar and forty cents (\$1.40) per hundred pounds of empty weight per year for each vehicle; provided, however, no license shall be issued for the operation of any taxicab until the governing body of the city or town in which such taxicab is principally operated, if the principal operation is in a city or town, has issued a certificate showing:

- a. ~~That the operator of such taxicab has provided liability insurance or other form of indemnity for injury to person or damage to property resulting from the operation of such taxicab, in such amount as required by the city or town, and~~
- b. ~~That the convenience and necessity of the public requires the operation of such taxicab.~~

~~All persons operating taxicabs on January 1, 1945, shall be entitled to a certificate of necessity and convenience for the number of taxicabs operated by them on such date, unless since said date the license of such person or persons to operate a taxicab or taxicabs has been revoked or their right~~

~~to operate has been withdrawn or revoked; provided that all persons operating taxicabs in Edgecombe, Lee, Nash and Union Counties on January 1, 1945, shall be entitled to certificates of necessity and convenience only with the approval of the governing authority of the town or city involved.~~

~~A taxicab shall be defined as any motor vehicle, seating nine or fewer passengers, operated upon any street or highway on call or demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in Article 17 of this Chapter. Such taxicab shall not be construed to be a common carrier nor its operator a public service corporation. of the vehicle."~~

Sec. 8. G.S. 20-88(b) reads as rewritten:

"(b) The following fees are imposed on the annual registration of self-propelled property-hauling vehicles; the fees are based on the type of vehicle and its weight:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight

	<u>Farmer Rate</u>
Not over 4,000 pounds	\$0.23
4,001 to 9,000 pounds inclusive	.29
9,001 to 13,000 pounds inclusive	.37
13,001 to 17,000 pounds inclusive	.51
Over 17,000 pounds	.58

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight

	<u>Private Hauler, Contract Carriers, Flat Rate Common Carriers and Exempt for Hire Carriers General Rate</u>
Not over 4,000 pounds	\$0.46
4,001 to 9,000 pounds inclusive	.63
9,001 to 13,000 pounds inclusive	.78
13,001 to 17,000 pounds inclusive	1.06
Over 17,000 pounds	1.20

- (1) The minimum fee for a vehicle licensed under this subsection is seventeen dollars and fifty cents (\$17.50) at the farmer rate and twenty-one dollars and fifty cents (\$21.50) at the ~~private hauler, contract carrier, and common carrier rates.~~ general rate.
- (2) The term 'farmer' as used in this subsection means any person engaged in the raising and growing of farm products on a farm in

North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.

- (3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
- (4) 'Farm products' means any food crop, livestock, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term 'farm products' also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.
- (5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.
- (5a) Notwithstanding any other provision of this Chapter, license plates issued pursuant to this subsection at the farmer rate may be purchased for any three-month period at one fourth of the annual fee.
- (6) There shall be paid to the Division annually as of the first of January, the following fees for 'wreckers' as defined under G.S. 20-4.01(50): a wrecker fully equipped weighing 7,000 pounds or less, seventy-five dollars (\$75.00); wreckers weighing in excess of 7,000 pounds shall pay one hundred forty-eight dollars (\$148.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer."

Sec. 9. G.S. 20-91 reads as rewritten:

"§ 20-91. ~~Records, applications, reports or returns required of carriers of passengers and property.~~ Audit of vehicle registrations under the International Registration Plan.

~~(a) Individual motor vehicle mileage records, motor vehicle equipment records, motor vehicle inventory records and motor vehicle revenue records shall be prepared and maintained in accordance with rules and regulations issued by the Commissioner.~~

~~Applications for licensing or registering motor vehicles in North Carolina shall be applied for on forms approved by the Commissioner and filed in accordance with rules and regulations issued by the Commissioner. Applications for licensing or registering motor vehicles in North Carolina are accepted subject to audit.~~

~~(b) It shall be the duty of the Commissioner, by competent auditors, to have the books, records, tax returns, applications, and any and all other pertinent records or documents of any registrant licensing or registering motor vehicles, or that are required to license or register motor vehicles, under the provisions of this Article, audited for the purpose of determining whether such registrant is maintaining acceptable records, filing correct applications and paying correct registration fees or taxes as required.~~

~~Every registrant subject to licensing or registration and audit under the provisions of this Article shall retain all pertinent licensing and registration documents, books, records, tax returns, applications and all supporting records and documents on which an application for licensing or registration is based for a period of three full registration years. These records shall at all times during the business hours of the day be subject to audit. The Division may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The records must be kept for three years after the date of the registration to which the records apply. The Division may examine these records during business hours. If it is determined these the records are not located in North Carolina and it becomes necessary for the auditors to travel to the place where such records are normally kept, an auditor must travel to the location of the records, the registrant shall reimburse North Carolina for per diem and travel expense incurred in the performance of such the audit. Where~~ If more than one registrant is audited on the same out-of-state trip, the per diem and travel expense may be prorated.

The Commissioner may enter into reciprocal audit agreements with other agencies of this State or agencies of another state or states, jurisdiction for the purpose of conducting joint audits of any registrant subject to audit under this Article, section.

(c) If an audit is conducted and it becomes necessary to assess the registrant for deficiencies in registration fees or taxes due based on the audit, the assessment will be determined based on the schedule of rates prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. If, during an audit, it is determined that:

- (1) A registrant failed or refused to make acceptable records available for audit as provided by law; or
- (2) A registrant misrepresented, falsified or concealed his records, then all plates and cab cards shall be deemed to have been issued erroneously and are subject to cancellation. The Commissioner may assess the registrant for an additional percentage up to one hundred percent (100%) North Carolina registration fees at the rate prescribed for that registration year, adding thereto and as a part thereof an amount equal to five percent (5%) of the tax to be collected. The Commissioner may cancel all registration and reciprocal privileges.

As a result of an audit, no assessment shall be issued and no claim for refund shall be allowed which is in an amount of less than ten dollars (\$10.00).

The notice of any assessments will be sent to the registrant by registered or certified mail at the address of the registrant as it appears in the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in

accordance with the requirements indicated above, will be sufficient regardless of whether or not it was ever received.

The failure of any registrant to pay any additional registration fees or tax within 30 days after the billing date, shall constitute cause for revocation of registration license plates, cab cards and reciprocal privileges.

~~(d) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner of Motor Vehicles, any deputy, assistant, agent, clerk, other officer, employee, or former officer or employee, to divulge or make known in any manner the amount of tax paid by any carrier of passengers or carrier of property as set forth or disclosed in any application, report or return required in remitting said tax, or as otherwise disclosed. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular applications, reports or returns, and the items thereof; the inspection of such applications, reports or returns by the Governor, Attorney General, Utilities Commissioner, or their or its duly authorized representatives; or the inspection by a legal representative of the State of the application, report or return of any carrier of passengers or carrier of property which shall bring an action to set aside or review the tax based thereon, or against which action or proceeding has been instituted to recover any tax or penalty imposed by this Article. Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor. Nothing in this subsection or in any other law shall prevent the exchange of information between the Division of Motor Vehicles and the Department of Revenue when such information is needed by either or both of said departments for the purposes of properly enforcing the laws with the administration of which either or both of said departments is charged."~~

Sec. 10. G.S. 20-92 is repealed.

Sec. 11. G.S. 20-99(a) reads as rewritten:

"(a) If any tax imposed by this Chapter, or any other tax levied by the State and payable to the Commissioner of Motor Vehicles, or any portion of such tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Motor Vehicles shall issue an order under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Motor Vehicles the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner. ~~Upon the issuance of said order to the sheriff, in the event the delinquent taxpayer shall be the operator of any common carrier of passengers or common carrier of property vehicle, the~~

~~franchise certificate issued to such operator shall become null and void and shall be canceled by the Utilities Commissioner, and it shall be unlawful for any such common carrier of passengers or the operator of any common carrier of property vehicle to continue the operation under said franchise."~~

Sec. 12. G.S. 20-101 reads as rewritten:

"§ 20-101. For-hire Certain business vehicles to be marked.

~~All motor vehicles licensed as common carriers or contract carriers of passengers or property, exempt for-hire motor carriers, and for-hire passenger-carrying motor carriers of greater than fifteen-passenger capacity shall have printed on each side of the vehicle in letters not less than three inches in height the name and home address of the owner, the certificate number, permit number, or exemption number under which said vehicle is operated, and such other identification as may be required and approved by the Utilities Commission~~ A motor vehicle that is subject to 49 U.S.C. Part 390, the federal motor carrier safety regulations, must be marked as required by that Part. A motor vehicle that is not subject to those regulations, has a gross vehicle weight rating of more than 10,000 pounds, and is used in intrastate commerce must have the name of the owner printed on the side of the vehicle in letters not less than three inches in height. A motor vehicle that is subject to regulation by the North Carolina Utilities Commission must be marked as required by that Commission and as otherwise required by this section."

Sec. 13. G.S. 20-113 is repealed.

Sec. 14. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed

a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission Federal Highway Administration and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation, rules of the Division."

Sec. 15. G.S. 20-123(a) reads as rewritten:

~~"(a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semitrailer: Provided that this provision shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers: Provided that this provision shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation. Nothing herein shall~~ The limitations in G.S. 20-116 on combination vehicles do not prohibit the towing of farm trailers not exceeding three in number nor exceeding a total length of 50 feet during the period from one-half hour before sunrise until one-half hour after sunset provided that when a red flag of at least 12 inches square shall be is prominently displayed on the last vehicle. The towing of farm trailers and equipment as herein permitted shall not be applicable allowed by this subsection does not apply to interstate or federal numbered highways."

Sec. 16. G.S. 20-130.1(b)(13) reads as rewritten:

~~"(13) Any lights that may be prescribed by the Interstate Commerce Commission; A light required by the Federal Highway Administration;"~~

Sec. 17. G.S. 20-215.1 reads as rewritten:

"§ 20-215.1. Definitions.

Unless the context otherwise requires, the following terms and phrases shall have, for the purpose of this Article, the following meaning: The following definitions apply in this Article:

- (1) 'Migratory Migratory farm worker' means any worker. -- An individual being transported by motor carrier to or from employment who is employed in agriculture.
- (2) 'Motor Motor carrier of migratory farm workers' means any person, firm or corporation workers. -- A person who or which for compensation transports at any one time in North Carolina five or more migratory farm workers to or from their employment by any motor vehicle, other than a passenger automobile or station

~~wagon, except a wagon. The term does not include any of the following:~~

- ~~a. A migratory farm worker who is transporting himself or his or her immediate family, but does not include any "common carrier" certified family.~~
- ~~b. A carrier of passengers regulated by the North Carolina Utilities Commission or the Interstate Commerce Commission; provided, the provisions of this Article shall not apply to the United States Department of Transportation.~~
- ~~c. The transportation of migratory farm workers on a vehicle owned by a farmer when such the migratory farm workers are employed or to be employed by the farmer to work on his own a farm or farm owned or controlled by him, the farmer.~~

(3) Repealed by Session Laws 1973, c. 1330, s. 39."

Sec. 18. G.S. 20-279.32 reads as rewritten:

"§ 20-279.32. *Exceptions.*

~~This Article, except its provisions as to the filing of proof of financial responsibility by a common carrier and its drivers, does not apply to any vehicle operated under a permit or certificate of convenience or necessity issued by the North Carolina Utilities Commission, or by the Interstate Commerce Commission, if public liability and property damage insurance for the protection of the public is required to be carried upon it. Article does not apply to a motor vehicle registered under G.S. 20-382 or G.S. 20-382.1 by a for-hire motor carrier. This Article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the state-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This Article does not apply to any motor vehicle owned by a county or municipality of the State of North Carolina, nor does it apply to the operator of a vehicle owned by a county or municipality of the State of North Carolina who becomes involved in an accident while operating such vehicle in the course of the operator's employment as an employee or officer of the county or municipality. This Article does not apply to the operator of a vehicle owned by a political subdivision, other than a county or municipality, of the State of North Carolina who becomes involved in an accident while operating such vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This Article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was~~

probably being operated in the course of the operator's employment as an employee or officer of the federal government."

Sec. 19. G.S. 20-317 reads as rewritten:

"§ 20-317. *Insurance required by any other law; certain operators not affected.*

This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article; provided, however, ~~that nothing contained in this Article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the North Carolina Utilities Commission or the Interstate Commerce Commission or both, but to the extent that any insurance policy, bond or other agreement filed with or certified to the North Carolina Utilities Commission or Interstate Commerce Commission as evidence of financial responsibility affords less protection to the public than the financial responsibility required to be certified to the Division of Motor Vehicles under this Article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policy, bond or other agreement so certified shall be deemed to be modified to conform to the financial responsibility required to be proved under this Article as a condition precedent to registration of motor vehicles in this State. It is the intention of this section to require owners of self-propelled motor vehicles registered in this State and operated under permits from the North Carolina Utilities Commission or the Interstate Commerce Commission to show and maintain proof of financial responsibility which is at least equal to the proof of financial responsibility required of other owners of self-propelled motor vehicles registered in this State.~~ Article. This Article applies to vehicles of motor carriers required to register with the Division under G.S. 20-382 or G.S. 20-382.1 only to the extent that the amount of financial responsibility required by this Article exceeds the amount required by the United States Department of Transportation."

Sec. 20. G.S. 20-376 reads as rewritten:

"§ 20-376. *Definitions.*

As used in this Article, The following definitions apply in this Article:

- (1) ~~"Certificate" means a certificate of public convenience and necessity issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a common carrier by motor vehicle.~~
- (2) ~~"Certificate of Exemption" means a certificate issued by the Division authorizing transportation services which are exempt from economic regulations under the Public Utilities Act.~~
- (3) ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~
- (4) ~~"Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation,~~

~~whether over regular or irregular routes, except as exempted in G.S. 62-260.~~

- (5) ~~"Contract carrier by motor vehicle" means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the North Carolina Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (4) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.~~
- (6) ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~
- (7) ~~"Exempt carrier" means any person providing transportation by motor vehicle for compensation which is declared to be exempt from economic regulation by the North Carolina Utilities Commission or the Interstate Commerce Commission.~~
- (8) ~~"For-hire carrier" means any person engaged in the transportation of persons or property by motor vehicle for compensation.~~
- (9) ~~"Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.~~
- (10) ~~through (12) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~
- (13) ~~"Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.~~
- (14) ~~"Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.~~
- (15) ~~"Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.~~
- (16) ~~"Motor carrier" means both a for-hire carrier by motor vehicle and a private carrier by motor vehicle.~~
- (17), (18) ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~
- (19) ~~"Permit" means a permit issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a contract carrier by motor vehicle.~~
- (20) ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~
- (21) ~~"Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or~~

~~bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.~~

~~(22) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 621, s. 5.~~

~~(1) Federal safety regulations. -- The federal motor carrier safety regulations contained in 49 U.S.C. Subchapter B, Parts 350 through 399.~~

~~(2) Foreign commerce. -- Commerce between any of the following:~~
~~a. A place in the United States and a place in a foreign country.~~
~~b. Places in the United States through any foreign country.~~

~~(3) Interstate commerce. -- Commerce between any of the following:~~
~~a. A place in a state and a place in another state.~~
~~b. Places in the same state through another state.~~

~~(4) Intrastate commerce. -- Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce."~~

Sec. 21. G.S. 20-378 is repealed.

Sec. 22. G.S. 20-379 reads as rewritten:

~~"§ 20-379. To investigate motor carriers under its control; visitation and inspection. Division to audit motor carriers for compliance.~~

~~(a) The Division shall from time to time visit the places of business and investigate the books and papers of all motor carriers to ascertain if all the orders, rules and regulations of the North Carolina Utilities Commission and the Division have been complied with, and shall have full power and authority to examine all officers, agents and employees of such motor carriers, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this Article and Chapter 62 of the General Statutes.~~

~~(b) Officers of the Division may during all reasonable hours enter upon any premises occupied by any motor carrier for the purpose of making the examinations and tests and exercising any power provided for in this Article and in Chapter 62 of the General Statutes, and may set up and use on such premises any apparatus and appliances necessary therefor. Such motor carrier shall have the right to be represented at the making of such examinations, tests and inspections.~~

The Division must periodically audit each motor carrier to determine if the carrier is complying with this Article and, if the motor carrier is subject to regulation by the North Carolina Utilities Commission, with Chapter 62 of the General Statutes. In conducting the audit, the Division may examine a person under oath, compel the production of papers and the attendance of witnesses, and copy a paper for use in the audit. An employee of the Division may enter the premises of a motor carrier during reasonable hours to enforce this Article. When on the premises of a motor carrier, an employee of the Division may set up and use equipment needed to make the tests required by this Article."

Sec. 23. G.S. 20-380 reads as rewritten:

"§ 20-380. ~~To~~ Division may investigate accidents involving motor carriers; to carriers and promote general safety program.

The Division may conduct a program of accident prevention and public safety covering all motor carriers with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a highway involving a motor carrier. Any information obtained upon such in an investigation shall be reduced to writing and a report thereof filed in the office of the Division, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Division may adopt rules ~~and regulations~~ for the safety of the public as affected by motor carriers and the safety of motor carrier employees. The Division shall cooperate with and coordinate its activities for motor carriers with other ~~programs of the North Carolina Utilities Commission, the North Carolina Insurance Department, the North Carolina Industrial Commission and other~~ agencies and organizations engaged in the promotion of highway safety and employee safety."

Sec. 24. G.S. 20-381 reads as rewritten:

"§ 20-381. Additional Specific powers and duties of Division applicable to motor vehicles. carriers.

The Division ~~is hereby vested with~~ has the following powers and ~~duties:~~ duties concerning motor carriers:

- (1) To prescribe qualifications and maximum hours of service of drivers and their helpers, ~~and rules regulating safety of helpers.~~
- (1a) ~~To set safety standards for operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Division may adopt and enforce the rules and regulations adopted and promulgated by the United States Department of Transportation with respect thereto, insofar as it finds the same to be practical and advantageous for application in this State and not in conflict with this Article. In order to promote safety of operation of motor carriers, the Division may avail itself of the assistance of any other agency of the State having special knowledge of such matters and it may make such vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may stop and inspect a vehicle to determine if it is in compliance with these standards and may conduct any investigations and tests as may be deemed it finds necessary to promote the safety of equipment and the safe operation on the highway of vehicles upon the highways. these vehicles.~~
- (1b) To enforce this Article, rules adopted under this Article, and the federal safety regulations.
- (2) ~~The Division and its duly authorized inspectors and agents shall have authority at any time to~~ To enter upon the premises of any a

~~motor carrier, subject to the provisions of this Article, for the purpose of inspecting any carrier to inspect a motor vehicle and or any equipment used by such the motor carriers in the transportation of carrier in transporting passengers and property, or property and property.~~

- (2a) ~~To prohibit the use by any a motor carrier of any motor vehicle or parts thereof or motor vehicle equipment thereon adjudged by such agents and inspectors to be the Division finds to be unsafe for use in the transportation of passengers and or property upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier on a highway. If an agent of the Division finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers and or property to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors may, if they are unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, the agent may stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers and or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers and or property and or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers and or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors, alcoholic beverages. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of the laws of this State or of the orders, rules and regulations of the North Carolina Utilities Commission or Division, this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes.~~

- (3) To relieve the highways of all undue burdens and safeguard traffic thereon by promulgating adopting and enforcing reasonable rules,

~~regulations rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all commodities including explosives or highway flammable or combustible liquids, substances or gases, the highways of all hazardous materials."~~

Sec. 25. G.S. 20-382 reads as rewritten:

"§ 20-382. *Registration of for-hire interstate motor carriers and verification that their for-hire vehicles are insured.*

(a) Registration. -- A for-hire motor carrier may not operate a for-hire motor vehicle in interstate commerce in this State unless the motor carrier has complied with all of the following requirements:

- (1) Registered its operations with the Division by doing one of the following:
 - a. Filing a copy of the certificate of authority issued to it by the ~~Interstate Commerce Commission~~ United States Department of Transportation allowing it to operate in this State and any amendments to that authority.
 - b. Certifying to the Division that it carries only items that are not regulated by the ~~Interstate Commerce Commission~~, United States Department of Transportation.
- (2) Verified, in accordance with subsection (b) or (c) of this section, that it has insurance for each for-hire motor vehicle it operates.
- (3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification for ~~ICC-Regulated~~ Federally Regulated Motor Carriers. -- A for-hire motor carrier that operates a for-hire motor vehicle in interstate commerce in this State, is regulated by the ~~Interstate Commerce Commission~~, United States Department of Transportation, and designates this State as its registration state must obtain a receipt from the Division verifying that each for-hire motor vehicle the motor carrier operates in any jurisdiction is insured. To obtain a receipt, the motor carrier must apply annually to the Division during the application period and state the number of for-hire motor vehicles the motor carrier intends to operate in each jurisdiction during the next calendar year. The certificate of authority issued to the motor carrier by the ~~Interstate Commerce Commission~~ United States Department of Transportation is proof that the motor carrier has insurance for its for-hire motor vehicles.

The motor carrier must keep a copy of the receipt in each of its for-hire motor vehicles. The motor carrier may transfer the receipt from one for-hire motor vehicle to another as long as the total number of for-hire motor vehicles operated in any jurisdiction and in all jurisdictions does not exceed the number stated on the receipt.

A motor carrier may operate more for-hire motor vehicles in a jurisdiction than stated in its most recent annual application only if the motor carrier files another application with the Division and obtains a receipt stating the increased number. A motor carrier that obtains a receipt for an increased number of for-hire motor vehicles must put a copy of the new receipt in each of its for-hire motor vehicles. The new receipt replaces rather than supplements the previous receipt.

(c) Insurance Verification for Nonregulated Motor Carriers. -- A for-hire motor carrier that operates a for-hire motor vehicle in interstate commerce in this State and is exempt from regulation by the Interstate Commerce Commission United States Department of Transportation must verify to the Division that each for-hire motor vehicle the motor carrier operates in this State is insured. To do this, the motor carrier must obtain annually for each for-hire motor vehicle a cab card approved by the Commissioner and a North Carolina identification stamp issued by the Division. To obtain an identification stamp, the motor carrier must apply annually to the Division during the application period for an identification stamp for each for-hire motor vehicle the motor carrier intends to operate in this State during the next 12-month period beginning February 1.

The motor carrier must place the identification stamp on the cab card and keep the cab card in the for-hire motor vehicle for which it was issued. An identification stamp is issued for a specific for-hire motor vehicle and is not transferable from one for-hire motor vehicle to another.

A motor carrier may operate in this State a for-hire motor vehicle for which it did not obtain an identification stamp during the most recent annual application period only if it obtains for that vehicle either a cab card and identification stamp or an emergency permit. A motor carrier may obtain an additional identification stamp after the close of the annual application period by filing an application for it with the Division. An identification stamp issued after the close of the annual application period expires the same date as one issued during the annual application period.

A motor carrier may obtain an emergency permit by filing an application for it with the Division. An emergency permit allows the motor carrier to operate a for-hire motor vehicle in this State without a cab card and identification stamp between the time the motor carrier has applied for an identification stamp and the time the Division issues the identification stamp."

Sec. 26. G.S. 20-382.1 reads as rewritten:

"§ 20-382.1. *Registration of for-hire intrastate motor carriers and verification that their vehicles are insured.*

(a) Registration. -- A for-hire motor carrier may not operate a for-hire motor vehicle in intrastate commerce in this State unless the motor carrier has complied with all of the following requirements:

(1) Registered For a motor carrier that hauls household goods, registered its operations with the State by doing one of the following:

- a. Obtaining a certificate ~~or a permit~~ of authority from the North Carolina Utilities ~~Commission, if the motor carrier hauls regulated items.~~ Commission.
- b. Obtaining a certificate of exemption from the Division, ~~if the motor carrier hauls only items that are not regulated by the North Carolina Utilities Commission.~~ Division.

(1a) For a motor carrier that does not haul household goods, registered its operations with the Division.

- (2) Verified, in accordance with subsection (b) of this section, that it has insurance for each for-hire motor vehicle it operates in this State.

- (3) Paid the fees set in G.S. 20-385.

(b) Insurance Verification. -- A for-hire motor carrier that operates a for-hire vehicle in intrastate commerce in this State must verify to the Division that each for-hire motor vehicle it operates in this State is insured. To do this, the motor carrier must submit an insurance verification form to the Division and must file annually with the Division a list of the for-hire vehicles it operates in this State."

Sec. 27. G.S. 20-384 reads as rewritten:

"§ 20-384. ~~Carriers must comply with safety rules and regulations. Penalty for certain violations.~~

(a) ~~Scope.~~ -- ~~The Division may adopt highway safety rules for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.~~

(b) ~~Infraction.~~ -- A motor carrier who fails to conduct a safety inspection of a vehicle as required by ~~49 C.F.R. Part 396, 396~~ of the federal ~~Motor Carrier Safety Regulations~~, safety regulations or who fails to mark a vehicle that has been inspected as required by that Part commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars (\$50.00)."

Sec. 28. G.S. 20-385 reads as rewritten:

"§ 20-385. *Fee schedule.*

(a) Amounts. --

- | | |
|--|---------|
| (1) Verification by a for-hire motor carrier of insurance for each for-hire motor vehicle operated in this State | \$ 1.00 |
| (2) Application by an intrastate motor carrier for a certificate of exemption | 25.00 |
| (3) Certification by an interstate motor carrier that it is not regulated by the <u>ICC United States Department of Transportation</u> | 25.00 |
| (4) Application by an interstate motor carrier for an emergency permit | 10.00. |

(b) Reciprocal Agreements. -- The fee set in subdivision (a)(1) of this section does not apply to the verification of insurance by an interstate motor carrier regulated by the Interstate Commerce Commission United States Department of Transportation if the Division had a reciprocal agreement on November 15, 1991, with another state by which no fee is imposed. The Division had reciprocal agreements as of that date with the following states: California, Delaware, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Vermont."

Sec. 29. G.S. 20-118(b)(3) reads as rewritten:

"(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight

S.B. 1380

CHAPTER 757

AN ACT AUTHORIZING DURHAM COUNTY TO ACCEPT
PAYMENTS IN LIEU OF REQUIRED SIDEWALK CONSTRUCTION.*The General Assembly of North Carolina enacts:*

Section 1. (a) A county may provide that in lieu of required sidewalk construction, pursuant to the county's subdivision and zoning ordinance, a developer may provide funds to be used for sidewalks that serve the occupants, residents, or invitees of the subdivision or development.

(b) Fees received by the county shall be deposited in a capital improvements reserve fund. The funds may be expended only for sidewalks and only in accordance with subsection (c) of this section.

(c) In order to ensure that fees paid by a particular development are expended on sidewalks that benefit that development, the county may establish at least two geographical districts or zones, and fees generated by developments within those districts or zones shall be spent on sidewalks that are located within, or that benefit property located within, those districts or zones.

Sec. 2. This act applies to Durham County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

RESOLUTIONS

S.J.R. 1484

RESOLUTION 16

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, 1996 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE MEMORY OF JAMES GORDON HANES, JR., FORMER STATE SENATOR AND INDUSTRIALIST.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING THE MEMORY OF JAMES GORDON HANES, JR., FORMER STATE SENATOR AND INDUSTRIALIST."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1996.

S.J.R. 1394

RESOLUTION 17

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, 1996 SESSION, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT MARRIAGES CONTRACTED OUTSIDE OF THIS STATE BETWEEN PERSONS OF THE SAME GENDER ARE NOT VALID.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT MARRIAGES CONTRACTED OUTSIDE OF THIS STATE BETWEEN PERSONS OF THE SAME GENDER ARE NOT VALID."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1996.

H.J.R. 1228

RESOLUTION 18

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, 1996 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF NANCY WINBON CHASE, FORMER STATE LEGISLATOR.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF NANCY WINBON CHASE, FORMER STATE LEGISLATOR".

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1996.

H.J.R. 1276

RESOLUTION 19

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, 1996 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING JOHN CARTERET, EARL OF GRANVILLE, FOR WHOM GRANVILLE COUNTY WAS NAMED UPON THE OCCASION OF THE TWO HUNDRED FIFTIETH ANNIVERSARY OF GRANVILLE COUNTY.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING JOHN CARTERET, EARL OF GRANVILLE, FOR WHOM GRANVILLE COUNTY WAS NAMED UPON THE OCCASION OF THE TWO HUNDREDTH FIFTIETH ANNIVERSARY OF GRANVILLE COUNTY".

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1996.

S.J.R. 1489

RESOLUTION 20

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF NANCY WINBON CHASE, FORMER STATE LEGISLATOR.

Whereas, Nancy Winbon Chase was born on a farm in Wayne County on October 12, 1903, to Robert Edward Winbon and Kate Davis Winbon; and

Whereas, Nancy Winbon Chase graduated from Fremont High School in 1921; and

Whereas, Nancy Winbon married John B. Chase on January 27, 1922, and was the mother of two sons, John B. Chase, Jr. and Thomas Edward Chase; and

Whereas, Nancy Winbon Chase served as Chair of the North Carolina Farm Bureau Women for 10 years; she received in 1956, the Bureau's Award for Distinguished Service to Agriculture; and was honored in 1964 by the Progressive Farmer magazine as the "South's Most Outstanding Woman of the Year"; and

Whereas, Nancy Winbon Chase's devotion to her community and State are evidenced by her participation on numerous boards, organizations, and committees including the Board of Directors of the North Carolina Farm Bureau Federation, the North Carolina Farm Bureau Tobacco Advisory Committee, the Wayne County Mental Health Association Board, the Wayne County Area Mental Health Board, the Board of North Carolina Mental Health Foundation, the Eureka School Board, the Charles B. Aycock School Board, the Board of Trustees of Wayne Community College, the Board of Trustees of Louisburg College, the Advisory Committee of the North Carolina School of Nursing, the Goldsboro Area Chamber of Commerce, the Wayne County Sheltered Workshop Committee, the Governor's Study Commission on the Education and Employment of Women, the Governor's Study Committee on Architectural Barriers, and the Charles B. Aycock Birthplace Committee; and

Whereas, Nancy Winbon Chase was a devoted member of the Democratic Party; in 1962, she was named Democratic Woman of the Year in Wayne County, and was also Democratic Woman of the Third District; and in 1964, she was named Democratic Woman of the Year for the State; and

Whereas, in 1962, Nancy Winbon Chase was elected as the first woman from Wayne County to serve in the State House of Representatives; and

Whereas, during her 16-year tenure in the General Assembly, Nancy Winbon Chase was a very effective legislator and was a particularly strong advocate of mental health and education issues; and

Whereas, Nancy Winbon Chase was held in high esteem by her colleagues in the General Assembly until her retirement in 1978; and

Whereas, in recognition of her devoted service and dedication to many causes, Nancy Winbon Chase was honored with numerous awards throughout her lifetime. The awards and honors she received include "Nancy Chase Day" at Eureka Elementary School in 1990, the "Honor of the Order of the Long Leaf Pine" in 1985, the North Carolina Award for Outstanding Public Service in 1982, the Irene McCain McFarland Award for outstanding services in Mental Health in 1973, the Paul B. Smith Distinguished Citizen Award by the North Carolina Council of Child Psychiatry in 1971, and the Distinguished Service Award from the Arthritis Foundation in 1969; and

Whereas, Nancy Winbon Chase's papers and pictures were chosen for inclusion in the Southern Historical Collection in the Wilson Library at the University of North Carolina at Chapel Hill in 1982; and

Whereas, Nancy Winbon Chase was a member of the Eureka United Methodist Church, where she served in many capacities, including as a Sunday School teacher for many years; and

Whereas, Nancy Winbon Chase was an Honorary Life Patron of the Women's Society of Christian Service; and

Whereas, with the passing of Nancy Winbon Chase on November 2, 1994, at the age of 91, the State of North Carolina lost one of its most beloved and respected citizens; and

Whereas, Nancy Winbon Chase is survived by two daughters-in-law, Janice Sasser Chase of Eureka and Jean Cox Chase of Hilton Head, South Carolina; a grandson, Johnny Chase of Eureka, three granddaughters, Nancy Chase of Decatur, Georgia, Jeanie Chase of Columbia, South Carolina, and Lu Chase Massey of Eureka; a grandson-in-law, and two great-grandchildren;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and accomplishments of Nancy Winbon Chase and for the great service she rendered to the State, Wayne County, and her community.

Sec. 2. The General Assembly wishes to express its sorrow upon the loss of an outstanding citizen of the State and wishes to express its sympathy to the family of Nancy Winbon Chase.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Nancy Winbon Chase.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1996.

S.J.R. 1485

RESOLUTION 21

A JOINT RESOLUTION HONORING THE MEMORY OF JAMES GORDON HANES, JR., FORMER STATE SENATOR AND INDUSTRIALIST.

Whereas, James Gordon Hanes, Jr., a native and lifelong resident of Winston-Salem, industrialist, legislator, philanthropist, and civic leader, died on August 31, 1995, at the age of 79; and

Whereas, in the passing of James Gordon Hanes, Jr., North Carolina and Forsyth County lost one of its most beloved and respected citizens; and

Whereas, James Gordon Hanes, Jr. was born on March 3, 1916, to James Gordon and Emmie Drewry Hanes; and

Whereas, James Gordon Hanes, Jr. graduated from Yale University in 1937, with a Bachelor of Arts degree; and

Whereas, James Gordon Hanes, Jr. began working at Hanes Hosiery Mills Company, the family-owned business, in 1939; and

Whereas, James Gordon Hanes, Jr. worked for the company for 40 years, retiring as Chair and Chief Executive Officer of the Hanes Corporation, the parent company of P.H. Hanes Knitting Company and Hanes Hosiery Mills Company; and

Whereas, James Gordon Hanes, Jr. served with distinction as a member of the North Carolina State Senate for two terms during the 1963 and 1965 Sessions of the General Assembly; and

Whereas, during his tenure in the General Assembly, James Gordon Hanes, Jr. actively supported conservation and environmental protection issues and an increase in the minimum wage; and

Whereas, James Gordon Hanes, Jr. served his community, State, and country in many worthwhile capacities, devoting his time, talents, and energy on numerous boards, commissions, and committees on the local, State, and national levels; and

Whereas, many organizations including civic and cultural organizations, as well as underprivileged students, benefitted from James Gordon Hanes, Jr.'s great but humble philanthropy; and

Whereas, as a major benefactor of the North Carolina Museum of Art through his signal contributions of works of art to its galleries and also through his efforts to build the new facility for that museum, James Gordon Hanes, Jr. has graced the lives of generations yet unborn; and

Whereas, James Gordon Hanes, Jr. was an advocate of equal opportunity who sought to improve race relations; and

Whereas, James Gordon Hanes, Jr. was a devoted member of the Centenary United Methodist Church; and

Whereas, James Gordon Hanes, Jr. was respected, admired and loved by those who knew him and had the privilege to work with him; and

Whereas, James Gordon Hanes, Jr. is survived by his wife, Helen Greever Copenhaver Hanes, his daughter, Margaret Drewry Hanes Nostitz, two sons, James G. Hanes, III and Eldridge C. Hanes, and six grandchildren;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of James Gordon Hanes, Jr. and expresses the deep gratitude and appreciation of this State and its citizens for his life and service.

Sec. 2. The General Assembly extends its sympathy to the family and friends of James Gordon Hanes, Jr.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the family of James Gordon Hanes, Jr.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.J.R. 1486

RESOLUTION 22

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, 1996 SESSION, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GOVERNOR JOHN MOTLEY MOREHEAD ON THE TWO HUNDREDTH ANNIVERSARY OF HIS BIRTH.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GOVERNOR JOHN MOTLEY MOREHEAD ON THE TWO HUNDREDTH ANNIVERSARY OF HIS BIRTH."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

S.J.R. 1490

RESOLUTION 23

A JOINT RESOLUTION HONORING JOHN CARTERET, EARL OF GRANVILLE, FOR WHOM GRANVILLE COUNTY WAS NAMED UPON THE OCCASION OF THE TWO HUNDRED FIFTIETH ANNIVERSARY OF GRANVILLE COUNTY.

Whereas, Granville County was named for Sir John Carteret, who was Earl of Granville and owner of the Granville District, the area in which Granville County is now located; and

Whereas, in 1729, John Carteret refused to sell his land rights to the Crown and was assigned the land in 1744; and

Whereas, Granville County was established by an act of the General Assembly of the Colony of North Carolina on June 28, 1746; and

Whereas, the citizens of Granville County have made plans to celebrate that County's 250th anniversary during 1996; and

Whereas, Granville County's anniversary is an event worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens; and

Whereas, special events during the year include a Reunion Day to be held in the county seat of Oxford on June 28, 1996; and

Whereas, the Reunion Day will include proclamations and presentations and entertainment appropriate to the occasion; and

Whereas, Granville county has extended an invitation to the people of adjoining counties and to the elected leaders of the State of North Carolina to join in this happy celebration;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of John Carteret, Earl of Granville, for whom Granville County is named.

Sec. 2. The General Assembly extends sincere greetings to the people of Granville County on the occasion of the county's celebration on June 28, 1996, and encourages the citizens of this State to join Granville County in demonstrating respect for their history and heritage and for those leaders of the past 250 years who have bequeathed them the community they enjoy today.

Sec. 3. The Secretary of State shall transmit a certified copy of this resolution to the Granville County Chamber of Commerce.

Sec. 4. This resolution is effective upon ratification.

Resolutions — 1995

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.J.R. 1491

RESOLUTION 24

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, REGULAR SESSION 1996, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WESLEY DAVIS WEBSTER, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WESLEY DAVIS WEBSTER, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.J.R. 1492

RESOLUTION 25

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, REGULAR SESSION 1996, TO CONSIDER A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES MELVIN CREECY, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF CHARLES MELVIN CREECY, FORMER MEMBER OF THE GENERAL ASSEMBLY."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

S.J.R. 1495

RESOLUTION 26

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF GOVERNOR JOHN MOTLEY MOREHEAD ON THE TWO HUNDREDTH ANNIVERSARY OF HIS BIRTH.

Whereas, the State of North Carolina has benefitted greatly from the life and legacy of service that John Motley Morehead left to all the people of this State; and

Whereas, John Motley Morehead, the eldest son of John and Obedience Motley Morehead, was born on July 4, 1796, in Pittsylvania County, Virginia; and

Whereas, at the age of two, John Motley Morehead's family moved to Rockingham County, North Carolina; and

Whereas, after graduating from the University of North Carolina in 1817, John Motley Morehead began to study law, later practicing law in Rockingham and Guilford Counties; and

Whereas, John Motley Morehead married Ann Eliza Lindsay in 1821, and was the father of eight children: Letitia Harper Morehead, Mary Corinna Morehead, Ann Eliza Morehead, Mary Louise Morehead, Emma Victoria Morehead, John Lindsay Morehead, James Turner Morehead, and Eugene Lindsay Morehead; and

Whereas, John Motley Morehead settled his family in Guilford County and erected his "Blandwood" home in 1825, which is preserved as a National Historic Landmark; and

Whereas, John Motley Morehead was a true statesman, serving in the House of Commons in 1821, 1826, 1827, and 1858, in the Senate in 1860, in the Provisional Congress and the Peace Conference in 1861, and as a delegate to the State Constitutional Convention in 1835; and

Whereas, John Motley Morehead served as Governor of North Carolina from 1841 to 1845; and

Whereas, John Motley Morehead was an advocate of a system of free public schools and it was during his tenure as Governor that the State established its first public school system; and

Whereas, John Motley Morehead served as a Trustee of the University of North Carolina for 38 years; and

Whereas, John Motley Morehead's other noted accomplishments include:

- The founding of the Edgeworth Female Seminary, a privately owned school for women in Greensboro;
- The founding of the North Carolina Railroad of which he served as its first president;
- The establishment of the first cotton mill in Rockingham County;
- The founding of a deepwater port on the coast of North Carolina that was named Morehead City in his honor;
- The establishment of the Governor Morehead School in Raleigh;
- The introduction of bills to improve the living conditions of slaves and also of a bill granting emancipation to slaves under certain conditions prior to the Civil War; and

Whereas, John Motley Morehead died on August 27, 1866; and

Whereas, on the 200th Anniversary of John Motley Morehead's birth, it is fitting that the General Assembly honors his life and memory by recognizing the many benefits bestowed to North Carolina due to the great leadership and accomplishments of Governor John Motley Morehead;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of John Motley Morehead. The General Assembly urges the citizens of this State to participate in all activities marking the 200th Anniversary of John Motley Morehead's birth.

Sec. 2. A copy of this resolution shall be transmitted by the Secretary of State to the family of John Motley Morehead.

Sec. 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.J.R. 1451

RESOLUTION 27

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, REGULAR SESSION 1996, TO CONSIDER A JOINT RESOLUTION CONDEMNING ARSON, VANDALISM, AND BOMB THREATS AGAINST PREDOMINANTLY BLACK CHURCHES AND SUPPORTING EFFORTS TO INVESTIGATE AND SOLVE THESE CRIMES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A JOINT RESOLUTION CONDEMNING ARSON, VANDALISM, AND BOMB THREATS AGAINST PREDOMINANTLY BLACK CHURCHES AND SUPPORTING EFFORTS TO INVESTIGATE AND SOLVE THESE CRIMES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.J.R. 1453

RESOLUTION 28

A JOINT RESOLUTION AUTHORIZING THE 1995 GENERAL ASSEMBLY, REGULAR SESSION 1996, TO CONSIDER A BILL TO BE ENTITLED AN ACT TO RAISE THE PENALTY FOR BURNING OF RELIGIOUS STRUCTURES.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The 1995 General Assembly, Regular Session 1996, may consider "A BILL TO BE ENTITLED AN ACT TO RAISE THE PENALTY FOR BURNING OF RELIGIOUS STRUCTURES."

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

H.J.R. 1459

RESOLUTION 29

A JOINT RESOLUTION CONDEMNING ARSON, VANDALISM, AND BOMB THREATS AGAINST PREDOMINANTLY BLACK CHURCHES AND SUPPORTING EFFORTS TO INVESTIGATE AND SOLVE THESE CRIMES.

Whereas, throughout the South, predominantly Black churches have been the targets of arson, vandalism, and bomb threats; and

Whereas, since early 1995, at least 30 predominantly Black churches have been burned in the South including three in North Carolina; and

Whereas, recently, bomb threats were left on the answering machine of the Durham County Chapter of the NAACP against three predominantly Black churches in Durham and bomb threats were left on the answering machine of a predominantly Black church in Charlotte; and

Whereas, these incidents have prompted various federal and state agencies and departments including the Federal Bureau of Investigation, the United States Justice Department, and the federal Bureau of Alcohol, Tobacco, and Firearms to investigate a possible connection between the incidents; and

Whereas, the Church Arson Prevention Act of 1996 has been introduced in Congress to clarify federal jurisdiction over offenses relating to damage to religious property, reflecting both bipartisan and biracial support; and

Whereas, there is a growing concern that these incidents may be acts of racially motivated domestic terrorism designed to intimidate African Americans and all Americans; and

Whereas, the people of the State of North Carolina will not tolerate such attempts at intimidation;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly condemns all acts of arson, vandalism, and bomb threats against predominantly Black churches and supports efforts aimed at ending these criminal acts against predominantly Black churches.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

SECOND EXTRA SESSION 1996

S.B. 3 **CHAPTER 1**

AN ACT TO INCORPORATE THE TOWN OF PELETIER.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Peletier is enacted to read:

"CHARTER OF THE TOWN OF PELETIER.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. Incorporation and Corporate Powers. The inhabitants of the Town of Peletier are a body corporate and politic under the name 'Town of Peletier'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Town Boundaries. Until modified in accordance with law, the boundaries of the Town of Peletier are as follows:

Beginning at the middle of the North Carolina Highway 58 bridge over Pettiford Creek and running thence in an easterly and northeasterly direction for approximately 1500 feet, more or less, to Mills Branch and the property line of the Croatan National Forest; thence in a northerly, northeasterly, northwesterly, and southwesterly direction with the boundaries of the Croatan National Forest to the East line of Whitehouse Forks Road; thence in a northeasterly direction with the East line of Whitehouse Forks Road to the South line of the Herbert and L.B. Page Tract containing approximately 76 acres and being identified as County tax parcel 15-27-01-9; thence with the common boundary line between the Page and Croatan National Forest Tracts in a northeasterly and northwesterly direction to Starkey's Creek Road; thence in a southwesterly direction along the West line of Starkey's Creek Road to the Northeast corner of the 101.85 acre tract of K&S Associates (Book 546, Page 31); thence along the North and Northwest line of K&S Associates to the easternmost corner of the property of Donald

Doherty (Book 668, Page 274), identified as County tax parcel 15-23-1-38; thence in a northwesterly direction along the Northeast line of Donald Doherty to the North line of Croatan Drive; thence in a southwesterly direction along the North line of Croatan Drive to North Carolina Highway 58; thence with Highway 58 in a northwesterly direction to the intersection of the center lines of Highway 58 and State Road 1109; thence in a southerly direction along the center line of State Road 1109 to the easternmost corner of the Silver Creek Golf Course property identified as County tax parcel 15-23-4-2; thence with the Silver Creek Golf Course Property in a westerly and southwesterly direction to the Northeast corner of Silver Lakes Subdivision (see Map Book 26, Page 81); thence along the East line of Silver Lakes Subdivision to State Road 1106; thence in a westerly direction along State Road 1106 to Silver Lake Court which serves as the access road into Silver Lake Subdivision; thence along the northern extension of Silver Lake Court to the easternmost corner of the L.E. McNeil residence adjoining Silver Creek Golf Course; thence in a westerly and southerly direction around the perimeter of the L.E. McNeil residence to State Road 1106; thence in a westerly direction approximately 660 feet to State Road 1107; thence in a southerly direction along the western line of State Road 1107 approximately 550 feet, more or less, to the North line of Silver Creek Plantation as the same is identified on a plat recorded in Map Book 25, Page 83, Carteret County Registry; thence along the North line of Silver Creek Plantation South 86-54-22 West 227.53 feet and South 75-30-50 West 30.40 feet to the William Truckner property (now or formerly) as identified on a plat recorded in Map Book 25, Page 83, Carteret County Registry; thence along the common boundary between William and Milton Truckner and Silver Creek Plantation in a southwesterly direction to White Oak River; thence in an easterly, southerly and easterly direction along the high water mark of the White Oak River and Pettiford Creek to the point of beginning; but excluding from the boundaries herewith any portions of Silver Creek Golf Course and the Croatan National Forest which may be located therein, as well as the property occupied by McCall's Restaurant and identified as County tax parcel 538509065869 and also excluding all territory located within the extraterritorial zoning jurisdiction of the town of Cape Carteret under Article 19 of Chapter 160A of the General Statutes on the date of ratification of this act.

"Sec. 2.2. **Survey.** The Town Board may cause to be completed a survey of the above described property by a registered land surveyor or engineer and to adopt the survey by resolution as the official map of the boundaries of the Town. Upon adoption and recordation of the same in the Carteret County Register of Deeds, the same shall become the official plat or map of the Town Boundaries.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Peletier is the Town Council which shall have five members.

"Sec. 3.2. **Manner of Electing Board.** The qualified voters of the entire Town shall elect the members of the Council.

"Sec. 3.3. **Term of Office of Council Members.** Members of the Town Council are elected to four-year terms, except at the initial election in 1997, the three highest vote getters shall be elected to four-year terms, and the next two highest vote getters shall be elected to two-year terms.

"Sec. 3.4. **Selection of Mayor; Term of Office.** The qualified voters of the entire Town shall elect the Mayor. A Mayor shall be elected in 1997 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Mayor-Council Plan.** The Town of Peletier operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until members of the Town Council are elected in 1997 in accordance with the Town Charter and the law of North Carolina, Donald T. Robinson, Eugene W. Jones, Billy Norris, Doris Wettig, and Alice Dunn shall serve as members of the Town Council, and Alan Walter Vinson shall serve as Mayor.

Sec. 3. From and after the effective date of this act, the citizens and property in the Town of Peletier shall be subject to municipal taxes levied for the year beginning July 1, 1996, and for that purpose the Town shall obtain from Carteret County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1996, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act.

Sec. 4. On November 5, 1996, the Carteret County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Peletier, the question of whether or not such area shall be incorporated as the Town of Peletier. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Sec. 5. In the election, the questions on the ballot shall be:

"[FOR]AGAINST

Incorporation of the Town of Peletier".

Sec. 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Peletier", this Charter shall become effective on the date that the Carteret County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 3 of this act shall have no force and effect.

Sec. 7. If a majority of the voters approve the incorporation of Peletier, the election of the Town Council and Mayor shall take place at an election held on the general election Tuesday of November 1997.

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of July, 1996.

H.B. 2

CHAPTER 2

AN ACT TO REDEFINE THE CORPORATE LIMITS OF THE TOWN OF SUMMERFIELD.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of the Charter of the Town of Summerfield, being Chapter 426, Session Laws of 1995, reads as rewritten:

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law the boundaries of the Town of Summerfield are as follows:

BEGINNING at the intersection of the ~~middle~~ western edge of United States Highway 220 and the ~~southern bank~~ middle of the Haw River: Thence in a generally western direction following the middle of the Haw River To the Bruce Township Line.

Thence south along the Bruce Township Line to the intersection with the corner of Guilford County Tax Map ACL-10-654, Block 1038, Lot 4.

Thence in a generally eastern direction along the northern boundary of Lot 4.

Thence in a generally southern direction along the eastern line of Lots 4 and 54, and Guilford County Tax Map ACL-10-654, Block 1037, Lots 14 and 15 to the intersection of the northern boundary of Lot 2.

Thence in a generally eastern direction along the northern boundary of Lot 2, and Guilford county Tax Map ACL-10-654, Block 984, Lot 6 and Lot 4 until reaching a point ~~in the middle~~ on the western edge of Belford Road.

Thence in a generally northern direction along the ~~center line~~ western edge of Belford Road to a point due west of the intersection of the southern corner of Guilford County Tax Map ACL-10-654, Block 983, Lot 33.

Thence in generally northern direction to and following the southern and eastern boundaries of Lot 33 to the southern most line of Lot 18.

Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map ACL-10-654, Block 983, Lots 18, 17, and 4.

Thence in a generally southern direction along the western boundary of Guilford County Tax Map ACL-10-654, Block 983, Lot 2.

Thence in a generally eastern direction along the southern boundaries of Guilford County Tax Map 10-654, Block 983, Lots 2, 31, 21, and 36.

Thence generally north along the eastern boundary of Lot 36 until reaching a point on the southern edge of Highway 150.

Thence east following the southern edge of Highway 150 to the intersection of Guilford County Tax Map 10-654 Block 972, Lot 1.

Thence generally south then east and then north following the boundaries of Lot 1.

Thence east following Highway 150 to the western boundary of Guilford County Tax Map 10-654, Block 972, Lot 15.

Thence south along the western boundaries of Lots 15 and 21.

Thence east along the southern boundary of Lot 21.

Thence south along the western boundary of Lot 18.

Thence generally east following the southern boundary of Lots 18, 17, and 20.

Thence generally north along the eastern boundary of Lots 20 and 11 until the intersection with the southern boundary of Lot 3.

Thence generally north east along the southern boundary of Lot 3 and generally east along the southern boundary of Lot 13 until reaching a point ~~in the center of~~ on the western edge of Brookbank Road.

Thence generally north following the ~~center~~ western edge of Brookbank Road until a point on the southern edge of Highway 150,

Thence generally east along the southern edge of Highway 150 to the intersection of the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 66.

Thence generally southeast, then northeast and then northwest along the boundaries of Lot 66 to a point on the southern side of Highway 150.

Thence generally east along the southern edge of Highway 150 to the western corner of Guilford County Tax Map ACL-1-37, Block 917, Lot 35.

Thence generally south along the western boundary of Lot 35.

Thence generally east along the southern boundary of Lots 35, 16, and 14 to the western boundary of Lot 32.

Thence south along the western boundary of Lot 32.

Thence generally east along the southern boundaries of Lots 32, 33, and 6 to a point on the eastern edge of Trinity Church Road at the western intersection of Lots 55 and 15.

Thence generally south along the western boundary of Lot 15; thence east on the southern boundary of Lot 15, thence south on the western boundary of Lots 34 & 59.

Thence generally east along the southern boundary of Lot 59.

Thence generally south along the eastern boundary of Lot 13 until reaching the northern most edge of Centerfield Road.

Thence generally east until the intersection of State Road 2120.

Thence generally southwest along State Road 2120 to the intersection of Greenlawn Drive.

Thence along Greenlawn Drive to the intersection of the G.S. Miles Subdivision line.

Thence west on northern boundary of G.S. Miles and south along the western boundary following the western boundary of the G.S. Miles Subdivision until reaching the northern boundary of Guilford County Tax Map ACL-1-35, Block 905, Lot 10.

Thence west following the northern boundary of Lot 10 and then generally south following the western boundaries of Lots 10, 9, 82, 41, 11, and 46.

Thence east along the southern boundary of Lot 46 to the western edge of Pleasant Ridge Road.

Thence south following the western edge of Pleasant Ridge Road until reaching the northern boundary of Lot 44.

Thence generally west along the northern boundary of Lot 44.

Thence south along the western boundaries of Lots 44 and 63.

Thence east along the southern boundary of Lot 63 until reaching the eastern edge of Pleasant Ridge Road.

Thence south along the eastern edge of Pleasant Ridge Road until reaching the southern boundary of the A. J. Norman Subdivision.

Thence east along the southern boundary of the A. J. Norman subdivision and Guilford County Tax Map ACL-1-35, Block 905, Lot 47 to the western boundary of Guilford Tax Map ACL-1-35, Block 905, Lot 21.

Thence south, then east and then north along the boundaries of Lot 21.

Thence east along the southern boundary of Lots 19, 51, 2, and 52 ~~to the center~~ and continuing due east until reaching a point on the eastern edge of Summerfield Road.

Thence south along the ~~center line~~ eastern edge of Summerfield road to the ~~intersection~~ a point on the western edge of United States Highway 220.

Thence generally north along the ~~center line~~ western edge of Highway 220 to a point due west of the southern boundary of Guilford County Tax Map ACL-1-35, Block 852, Lot 21; thence generally east to and along the southern boundary of Lot 21; thence north along the eastern boundary to a point on the northern edge of North Carolina Highway 150 that is due north of the point of the intersection of with North Carolina Highway 150.

Thence east along the ~~center line~~ northern edge of Highway 150 to the intersection of Stradder road. Thence north along the ~~center line~~ western edge of Stradder road to the intersection of Scalesville road. Thence generally west to the intersection with Highway 220. Thence generally north along the western boundary of Highway 220 to the intersection of the Haw River and the point of beginning.

In addition, the boundaries of the Town of Summerfield include the following:

I. Polo Farms and Adjoining Property:

- (1) Polo Farms Subdivision: Beginning at a right-of-way monument in the eastern margin of S.R. 2321 (Strawberry Road), being the northernmost point of the land of T.L. Alley and a common corner of T.L. Alley and Robert C. Lock, thence, with the eastern margin of S.R. 2321 the following courses and distances: N. 62°18' E. 191.96 ft.; N. 55°02' E. 205.76 ft.; N. 47°00' E. 184.82 ft.; N. 39°09' E. 224.75 ft. to a right-of-way monument; N. 29°06' E. 482.21 ft. to a concrete monument; N. 27°30' E. 599.90 ft.; N. 27°55' E. 60.33 ft.; N. 30°14' E. 484.52 ft. N. 33°35' E. 250.85 ft. to an existing iron pin in the eastern margin of S.R. 2321; thence N. 38°32' E. 21.05 ft. to an existing iron pin; thence S. 56°08' E. 244.55 ft. to an existing iron pin; thence S. 89°28' E. 424.88 ft. to an existing iron pin in the line of Alvin G. Wall; thence with the line of Wall the following courses and distances: S. 10°16' W. 183.99 ft.; S. 10°17' W. 85.24 ft.; S. 35°02' W. 145.77 ft.; thence N. 84°19' E. 1414.31 ft. to an existing iron pin in the eastern edge of a 60 ft. right-of-way for S.R. 2322 (Alley Road); thence N. 7°31' E. 168.4 ft. to an existing iron pin, the southwest corner of Benjamin C. Alley; thence with Benjamin C. Alley's south line N. 88°48' E. 1062.67 ft. to an existing iron pin, said Alley's southeast corner; thence N. 00°56' W. 230 ft. to an existing iron pin in the line of Lunsford Richardson; thence with the line of Richardson S. 82°07' E. 1009.08 ft. to a new iron pin; thence N. 84°45' E. 1439.45 ft. to

a new iron pin; thence S. 12°21' E. 332.5 ft. to an existing iron pin in the centerline of S.R. 2323; thence on the same bearing 2331.0 ft. to an existing iron pin in the line of the City of Greensboro; thence with the line of the City of Greensboro the following courses and distances: N. 89°02' W. 400.04 ft.; N. 89°02' W. 399.96 ft.; N. 10°28' E. 449.82 ft.; N. 67°32' W. 299.84 ft.; S. 25°58' W. 515.95 ft.; S. 84°08' W. 1244.80 ft.; N. 79°30' W. 530.25 ft.; N. 89°12' W. 407.88 ft.; S. 00°36' W. 259.88 ft.; S. 62°04' W. 599.50 ft.; S. 69°15' W. 1294.14 ft.; N. 33°48' W. 658.12 ft.; S. 85°59' W. 1076.52 ft.; N. 64°55' W. 652.26 ft. to an existing iron pin, the southeastern corner of T. L. Alley; thence with the eastern line of T. L. Alley N. 09°37' W. 312.83 ft. to an existing iron pin; thence N. 48°40' W. 442.87 ft. to a right-of-way monument in the eastern margin of S.R. 2321, the Point of Beginning.

- (2) William W. Dick & Teresa F. Dick property of 6.12 acres recorded at Deed Book, 3185, page 637 and Deed Book 3717, page 1330.
- (3) Alice B. Dick property consisting of approximately 11 acres, recorded at Deed Book 1295, page 594.

II. Hillsdale Lake Community:

- (1) Lona T. Long and Others Subdivision Plat Book 108, page 40, Lots 1, 2, and 3.
- (2) Lona T. Long Subdivision Plat Book 90, page 25, Lots 5, 6, 7, and 8.
- (3) Lona T. Long Heirs Property, Tax Map 839, Lot 7.
- (4) Lona T. Long Subdivision Plat Book, 85, page 105.
- (5) Lots 1 through 104 of the Hillsdale Lake Subdivision, recorded in Plat Book 27, pages 8 and 17, Plat Book 26, page 55, Plat Book 28, page 29, Plat Book 32, page 27, and Plat Book 72, page 372.
- (6) Gene B. Lickel Subdivision Plat Book 43, Page 63, Lots 1, 2, 3, and 4.

III. Rayle Heights: Tax Lots 3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, 19, 20, 22, 26, 27, 28, 29, 32, 33, 34."

Sec. 2. This act becomes effective June 30, 1996.

In the General Assembly read three times and ratified this the 18th day of July, 1996.

H.B. 4

CHAPTER 3

AN ACT EXTENDING RIGHTS TO PETITION FOR VOLUNTARY NONCONTIGUOUS ANNEXATION INTO THE CITY OF HENDERSON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

- (1) The nearest point on the proposed satellite corporate limits must be not more than ~~three~~ five miles from the primary corporate limits of the annexing city.

- (2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing ~~city~~ city, unless the other city consents to the same by ordinance, and a copy of the ordinance is attached to the petition at the time of its submission to the city.
- (3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- (4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
- (5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city."

Sec. 2. This act applies to the City of Henderson only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1996.

H.B. 5

CHAPTER 4

AN ACT TO RATIFY AN AGREEMENT BETWEEN THE IREDELL-STATESVILLE SCHOOLS BOARD OF EDUCATION AND THE MOORESVILLE GRADED SCHOOL DISTRICT BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. The Agreement entered into on April 30, 1996, between the Iredell-Statesville Schools Board of Education and the Mooresville Graded School District Board of Education, as approved by the State Board of Education on May 2, 1996, and the Board of Commissioners of the County of Iredell on May 7, 1996, is ratified as if it had been an act of the General Assembly.

Sec. 2. Nothing in this act revives any provision of Sections 7, 8, or 9 of Chapter 556 of the Public Laws of 1905 that have been superseded by general law.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1996.

H.B. 6

CHAPTER 5

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF SPRUCE PINE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Spruce Pine:

Being an area surrounded on the east, south and west by the North Toe River and on the south by the present corporate limits and being described as follows:

BEGINNING on a point on the eastern bank of the North Toe River, said point being the point where the present southern boundary of the Town of Spruce Pine intersects the North Toe River, said point being the first point where the North Toe River enters the present corporate limits of the Town of Spruce Pine and runs thence down and with the bank of North Toe River on a curve bearing to the left to the point where the river again crosses the southern boundary line of the present corporate limit of the Town of Spruce Pine; thence running with the present southern boundary of the corporate limit of the Town of Spruce Pine due west to the point of **BEGINNING**.

Sec. 2. This act shall have no effect upon the validity of any liens of the Town of Spruce Pine for ad valorem taxes for years before 1996.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of July, 1996.

H.B. 15

CHAPTER 6

AN ACT TO ANNEX A DESCRIBED AREA TO THE CORPORATE LIMITS OF THE TOWN OF MOUNT OLIVE.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Mount Olive are extended to include the following described area:
BEGINNING at an Iron stake within the most Northeastern intersectional corner of Morning Drive and Nellie Avenue, said beginning point being located S. 71° 56' 37" E. 972.66 feet from an iron stake at the intersection of the centerline of the Seaboard Coastline Railroad and the centerline of N. C. Secondary Road No. 1947 (Mt. Gillead Road), said iron stake having N. C. Grid Coordinates: X = 2,275,737.7896; Y = 523, 416.2294; and said beginning point having N. C. Grid Coordinates: X = 2,276,662.5431; Y = 523,114.7515; thence from the beginning with the Eastern right of way of Nellie Avenue, N. 36° 27' 41" E. 240.00 feet to an iron stake within the most Southeastern corner of Nellie Avenue and Odom Avenue; thence with the Southern right of way of Odom Avenue, S. 53° 32' 19" E. 430.56 feet to an iron stake within the most Southwestern intersectional corner of Lewis Avenue and Odom Avenue; thence continuing S. 53° 32' 19" E. 48.25 feet to an iron stake on the Eastern right of way of Lewis Avenue; thence with the Eastern right of way of Lewis Avenue, N. 02° 23' 01" E. 107.89 feet to an iron stake, the most Southwestern corner of Lot No. 27, Block F of Enterprise Subdivision; thence leaving the Eastern right of way of Lewis Avenue, with the line of Lot No. 27, S. 88° 47' 53" E. 120.00 feet to an iron stake, the most Southeastern corner of Lot No. 27; thence with and beyond the line of Lot No. 27 and to and with the line of Lot No. 28, N. 02° 21' 27" E. 100.00 feet to an iron stake, the most Northeastern corner of Lot No. 28 and the most Southeastern corner of Lot No. 29, Block F of Enterprise Subdivision; thence with the line of Lot No. 6, S. 88° 47' 53"

E. 120.00 feet to an iron stake on the Western right of way of Washington Avenue, the most Southeastern corner of Lot No. 6, Block F of Enterprise Subdivision; thence with the Western right of way of Washington Avenue, S. $02^{\circ} 21' 27''$ W. 665.09 feet to an iron stake within the most Northwestern intersectional corner of Washington Avenue and Morning Drive; thence with the Northern right of way of Morning Drive, N. $53^{\circ} 32' 19''$ W. 289.79 feet to an iron stake within the most Northeastern intersectional corner of Lewis Avenue and Morning Drive; thence continuing N. $53^{\circ} 32' 19''$ W. 48.31 feet to an iron stake within the most Northwestern intersectional corner of Lewis Avenue and Morning Drive; thence continuing and with the Northern right of way of Morning Drive, N. $53^{\circ} 32' 19''$ W. 593.08 feet to an iron stake within the most Northeastern intersectional corner of Nellie Avenue and Morning Drive, said iron stake having N. C. Grid Coordinates: $X = 2,276,662.5431$; $Y = 523,114.7515$, the point of beginning containing 261,951 Square Feet or 6.014 Acres more or less.

Sec. 2. This act becomes effective July 31, 1996. Ad valorem taxes for fiscal year 1996-97 shall be prorated in accordance with G.S. 160A-58.10.

In the General Assembly read three times and ratified this the 18th day of July, 1996.

H.B. 17

CHAPTER 7

AN ACT TO CORRECT, SET OUT, AND CLARIFY THE BOUNDARIES
OF THE TOWN OF DANBURY AND TO VALIDATE ACTIONS OF
THE TOWN.

The General Assembly of North Carolina enacts:

Section 1. (a) Any and all official acts, actions, expenditures, and levies of taxes or assessments by the Town of Danbury, prior to ratification of this act, with respect to or affecting:

- (1) Territory and properties described in Section 2 of this act; or
- (2) Territory and properties considered to be a part of the Town of Danbury at the time but not included in the description in Section 2 of this act,

are hereby ratified, validated, and confirmed, notwithstanding the variance of the boundaries.

(b) All elections, and the results thereof, previously held in and for the Town of Danbury are hereby validated.

Sec. 2. The corporate limits of the Town of Danbury are as follows:

BEGINNING at the mouth of Scott branch as it enters the Dan River and running in a northwesterly course with the meanders of Scott branch to Earl German's line; thence with Earl German's line N $0-39-15$ W 1506.83 feet to a point, the Northeast corner of the boundary of Danbury, thence running S $87-47-02$ W 4401.76 feet to the Paul Taylor, now Susan Montague line, thence with the Susan Montague line S $2-42-57$ W 615.83 feet to a point in the center of Highway 89; thence west with the meanders of Highway 89 approximately 279 feet to the formerly William M. Nelson

now Eanes boundary corner in center of Highway 89, also the Susan Montague corner in the Highway 89, thence with the Susan Montague line S 65-56-25 W 1185.89 feet, thence S 54-54-47 E crossing the city limit sign at 1040.27 a total distance of 6594.26 feet to a point in the center of the dam on Mill Creek; said point on the center of the dam being located N 83-40-55 E 1209.39 from a concrete monument the Northeast corner of Hanging Rock State Park-Taylor tract; thence down Mill Creek as it meanders to its mouth in Dan River Estate, thence down Dan River as it meanders to the Spot Taylor line now property of Stokes County, thence with the Spot Taylor Estate line, now Stokes County N 75-31-27 W 433.26 feet to a railroad spike in the center of Sheppard Mill Road; thence continuing with said county line and Spot Taylor Estate line N 75-31-27 W 281.82 feet to a point in the center of Dan River, thence with the meanders of Dan River to the mouth of Scott Branch, the point and place of the BEGINNING.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of July, 1996.

H.B. 34

CHAPTER 8

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF SPRUCE PINE, AND TO EXEMPT THE PROPERTY FROM THE CEILING ON SATELLITE ANNEXATIONS BY THE TOWN.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Spruce Pine:

Being that parcel of real estate lying south of the present southern boundary of The Town of Spruce Pine in Grassy Creek township, Mitchell County, North Carolina and being a former water supply, is presently owned by The Town of Spruce Pine and was acquired by the following instruments:

1. Judgment in Eminent Domain Proceedings brought by The Town of Spruce Pine against H. F. Lawrence and wife Carrie Lawrence wherein The Town of Spruce Pine acquired fee simple title to a parcel of real estate containing 187 acres, more or less. Said judgment was entered in the Superior Court of Mitchell County, North Carolina at the April 1924 term of said court.

2. Warranty deed from Stokes T. Henry and wife Agnes M. Henry to The Town of Spruce Pine wherein there was conveyed to The Town of Spruce Pine a parcel of real estate containing 229.2 acres, more or less. Said warranty deed was executed by Stokes T. Henry and wife Agnes M. Henry on the 12th day of July, 1923 and recorded in the office of the Register of Deeds of Mitchell County, North Carolina, in book 80 at page 27.

Said parcel of real estate is shown on the official tax maps of Mitchell County prepared by Transworld Services, Inc. and is thereon identified as Parcel 0789.32-5117 and according to said map contains 360.14 acres.

Said parcel of real estate is bounded on the east by Swiss Pine Lake Subdivision; on the north by Swiss Pine Lake Subdivision and lands owned by John H. Boone described in deed of record in Book 228 at page 116 in the office of the Register of Deeds of Mitchell County, North Carolina; on the west by lands now or formerly owned by Robert Swanson, Ruth Carpenter and Margaret Gris, and lands of John D. Shepherd, Jr.; on the south by lands now or formerly owned by Donald McIntosh, Trustee; Eisaman Wentzell, Terry Elferdink and Kenneth Pitman.

Sec. 2. The property described in Section 1 shall not be included in any calculations made under G.S. 160A-58.1(b)(5).

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of July, 1996.

S.B. 41

CHAPTER 9

AN ACT TO PROVIDE FOR PARTISAN ELECTION OF SUPERIOR COURT JUDGES IN THEIR DISTRICTS IN 1996 AND NONPARTISAN ELECTION IN THEIR DISTRICTS THEREAFTER AND CONCERNING VACANCIES IN SUPERIOR COURT JUDGESHIPS.

The General Assembly of North Carolina enacts:

PART 1. PARTISAN ELECTION WITHIN DISTRICTS

Section 1. Chapter 7A of the General Statutes is amended by inserting a new section to read:

"§ 7A-41.2. Nomination and election of regular superior court judges.

Candidates for the office of regular superior court judge shall be both nominated and elected by the qualified voters of the superior court district for which the election is sought."

Sec. 2. G.S. 163-1 is amended in the table by deleting the word "State" in the column entitled "Jurisdiction" under the entry for "Judges of the superior courts", and substituting "Superior Court District".

Sec. 3. G.S. 163-140(a) reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (6) Repealed by Session Laws 1973, c. 793, s. 56.
- (7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a

way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~If the State Board of Elections divides the State ballot into two or more ballots, all~~ All candidates for superior court shall appear on the same ballot except that the ~~State Board of Elections~~ appropriate board of elections may divide the election of superior court judges into two ballots ~~either because of length of the ballot or~~ to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot."

Sec. 4. G.S. 163-140(b)(4) reads as rewritten:

"(4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for State officers, and for all State officers where mechanical voting machines are used ~~(including judges of the superior court)~~ shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the

names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.

b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections. If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 5. G.S. 163-140(b)(5) reads as rewritten:

"(5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial district in which the county is situated, district judge for the district court district in which the county is situated, regular resident superior court judge for the superior court district in which the county or part thereof is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated), and for all county offices where mechanical voting machines are used, shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words 'Unaffiliated Candidates.' Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: 'For a straight ticket, mark within this circle.' With distinct black lines, the

county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed 'Unaffiliated Candidates.' At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type, and the words 'you must also' in instruction c. shall be underlined:

- 'a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.
- d. If you tear or deface or wrongly mark this ballot, return it and get another.'

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot."

Sec. 6. G.S. 163-192 reads as rewritten:

"§ 163-192. *State Board of Elections to prepare abstracts and declare results of primaries and elections.*

(a) After Primary. -- At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

- (1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, ~~judges of the superior court,~~ and United States Senators.
- (2) For members of the United States House of Representatives for the several congressional districts in the State.
- (3) For district court judges for the several district court districts in the State.
- (3a) For superior court judges for the several superior court districts in the State.
- (4) For district attorney in the several prosecutorial districts in the State.
- (5) For State Senators in the several senatorial districts in the State composed of more than one county.
- (6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. -- At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

- (1) For President and Vice-President of the United States, when an election is held for those offices.
- (2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, ~~judges of the superior court,~~ and United States Senators.
- (3) For members of the United States House of Representatives for the several congressional districts in the State.
- (4) For district court judges for the several district court districts as defined in G.S. 7A-133 in the State.
- (4a) For superior court judges for the several superior court districts in the State.
- (5) For district attorney in the several prosecutorial districts in the State.
- (6) For State Senators in the several senatorial districts in the State composed of more than one county.
- (7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
- (8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. -- The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office."

PART 2. NONPARTISAN ELECTIONS

Sec. 7. Chapter 163 of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER X. ELECTION OF SUPERIOR COURT JUDGES.

"ARTICLE 25.

"Nomination and Election of Superior Court Judges.

"§ 163-321. Applicability.

The nomination and election of superior court judges of the General Court of Justice shall be as provided by this Article.

"§ 163-322. Nonpartisan primary election method.

(a) General. Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. In the election, the names of those candidates declared nominated without a primary and those candidates

nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"§ 163-323. Notice of candidacy.

(a) Form of Notice. Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

'Date _____;

I hereby file notice that I am a candidate for election to the office of _____
in the regular election to be held _____.

Signed _____;

(Name of Candidate)

Witness: _____.

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

(c) Withdrawal of Notice of Candidacy. Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the county contains more than one superior court district, stating the

superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. If the candidate is seeking the office of superior court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for

verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

" § 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of superior court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for superior court.

(c) Receipt of Notification by County Board. Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

" § 163-327. Death of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. If a candidate for nomination in a primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. If a person elected to the office of superior court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

" § 163-328. Failure of candidates to file; death of a candidate before election.

(a) Insufficient Number of Candidates. If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death of Candidate; Reopening Filing. If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the

number of positions to be filled, and thereafter a candidate dies before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Death of Nominated Candidate; Ballots Not Reprinted. If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.

(a) General. If a vacancy is created in the office of judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. Elections under this section shall be conducted using the following rules:

- (1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

- (2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.
- (3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.
- (4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.
- (5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-140(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to be Furnished by County Board of Elections. It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Superior court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"§ 163-333. Canvass.

The county board of elections shall, in addition to the requirements contained in G.S. 163-175, canvass the results in judicial primaries and elections, the number of legal votes cast in each precinct for each candidate,

the name of each person voted for, and the total number of votes cast in the county for each person for each different office.

"§ 163-334. Counting of ballots.

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"§ 163-335. Other rules.

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

Sec. 8. G.S. 163-106(c) reads as rewritten:

"(c) Time for Filing Notice of Candidacy. -- Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

Justices of the Supreme Court, Judges of the Court of Appeals

~~Judges of the superior courts~~

Judges of the district courts

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices."

Sec. 9. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. -- At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the General Court of Justice other than superior court	One percent (1%) of the annual salary of the office sought

<u>judge</u>	
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars (\$10.00)
Members of county board of education, if compensated entirely by fees	Five dollars (\$5.00)
Sheriff, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Register of deeds, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Any other county office, if compensated entirely by fees	Twenty dollars (\$20.00), plus one percent (1%) of the income of the office above two thousand dollars (\$2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)."

Sec. 10. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall

immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
Justices, Judges, or District Attorneys of the General Court of
Justice, other than superior court judge,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in
multi-county representative districts."

Sec. 11. G.S. 163-140(a), as amended by Section 3 of this act, reads as rewritten:

"(a) Kinds of General Election Ballots; Right to Combine. -- For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (6) Repealed by Session Laws 1973, c. 793, s. 56.
- (7) Ballot for constitutional amendments and other propositions submitted to the people.
- (8) Judicial ballot for superior court.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

~~All candidates for superior court shall appear on the same ballot except that the appropriate board of elections may divide the election of superior~~

~~court judges into two ballots to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot."~~

Sec. 12. G.S. 163-107.1(c) reads as rewritten:

"(c) County, Municipal and District Primaries. -- If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and judge of the District Court ~~and judge of the Superior Court~~, or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

Sec. 13. G.S. 163-114 reads as rewritten:

"§ 163-114. *Filling vacancies among party nominees occurring after nomination and before election.*

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
Any elective State office	Vacancy is to be filled by
United States Senator	appointment of State
	executive committee of
	political party in which
	vacancy occurs
A district office, including:	
Member of the United States	
House of Representatives	
Judge of superior court	
Judge of district court	

District Attorney	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a multi-county senatorial district	
Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a single-county representative district	
Any elective county office	
Judge of Superior Court in a single-county superior court district where the district is the whole county or part of the county	County executive committee of political party in which vacancy occurs; provided, in the case of a superior court judge in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Judge of Superior Court in a multi-county superior court district	Appropriate district executive committee of political party in which vacancy occurs.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy

arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

~~In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.~~

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

Sec. 14. G.S. 163-122 is amended by adding the following subsection:

"(c) This section does not apply to elections under Article 25 of this Chapter."

Sec. 15. G.S. 163-135 is amended by adding a new subsection to read:

"(f) Judicial Elections. -- Except as provided by Article 25 of this Chapter, this Article shall apply to and control all elections for judges of the superior court."

Sec. 16. G.S. 163-137(a) is amended by adding the following new subdivision:

"(4) The names of all candidates nominated under Article 25 of this Chapter."

Sec. 17. G.S. 163-138 reads as rewritten:

"§ 163-138. Instructions for printing names on primary and election ballots.

In preparing primary, general, and special election ballots, the legal name of a candidate (together with his nickname in the situation outlined below) shall be printed precisely as it appears on the notice of candidacy form filed in accordance with G.S. 163-106 ~~163-106~~, G.S. 163-323, or in petition forms filed in accordance with G.S. 163-122. If the candidate has inserted a nickname on the notice of candidacy or in the petition, it shall be printed on the ballot immediately before the candidate's surname and shall be enclosed by parentheses. Notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by G.S. 163-106(a), unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but

shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the alternate indicated by the candidate on his affidavit under G.S. ~~163-106(a)~~, 163-106(a) or G.S. 163-323(a). No title, appendage, or appellation indicating rank, status, or position, shall be printed before or following or as a nickname or in connection with the name of any candidate on any ballot. Nevertheless, a candidate who is a married woman may use the prefix 'Mrs.' and a candidate who is a single woman may use the prefix 'Miss' before her name if she so elects."

Sec. 18. G.S. 163-140(b) is amended by adding a new subdivision to read:

"(9) Judicial ballot for superior court. The form of the judicial ballot for judges of the superior court and district court shall be prepared by the county board of elections. On the face of the ballot, shall be printed instructions for marking the voter's choice, in addition to the following instruction: 'If you tear or deface or wrongly mark this ballot, return it and get another.' On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible county board of elections. This ballot may not be combined with any other ballot except another judicial ballot."

Sec. 19. G.S. 163-140(c)(2) reads as rewritten:

"(2) Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Ballots for primaries held under Article 25 of this Chapter shall be different in color than the ballots of parties. Primary ballots shall not provide for voting a straight-party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot."

Sec. 19.1. G.S. 163-156(c), as amended by Section 22 of this act, reads as rewritten:

"(c) If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article VI, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

- (1) If the vacancy occurs prior to the ~~tenth day before the filing period ends~~ opening of the filing period under G.S. ~~163-106(c), 163-323(b)~~, nominations shall be made by primary election as provided by Article ~~40~~ 25 of this Chapter, without designation as to the vacancy;
- (2) If the vacancy occurs beginning on the ~~tenth day before the filing period ends~~ opening of the filing period under G.S. ~~163-106(c), 163-323(b)~~, and ending on the sixtieth day before the general

~~election, a nomination shall be made by the appropriate district executive committee of each political party and the names of the nominees shall be printed on the general election ballots, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy;~~

- (3) Repealed by Session Laws 1987, c. 485, s. 3.
- (4) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivisions (1) or (2) of this subsection. The persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms."

Sec. 20. G.S. 163-191 reads as rewritten:

"§ 163-191. Contested primaries and elections; how tie broken.

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie ~~vote~~, except if there is a tie for superior court judge the tie shall be broken in accordance with Article 25 of this Chapter."

PART 3. SUPERIOR COURT VACANCIES

Sec. 21. G.S. 163-9, as amended by Chapter 98 of the 1995 Session Laws, reads as rewritten:

"§ 163-9. Filling vacancies in State and district judicial offices.

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) ~~An~~ Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

- (1) With only one resident judge; or
- (2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

Sec. 22. G.S. 163-156(c) reads as rewritten:

"(c) ~~When there is no election~~ If a vacancy occurs in a judicial district for any offices of superior court ~~judge for full terms, judge, and on account of the occurrence of such vacancy,~~ there is to be an election for one or more ~~unexpired~~ terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article VI, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

- (1) If the ~~unexpired term~~ vacancy occurs prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by Article 10 of this Chapter, without designation as to the vacancy;
- (2) If the ~~unexpired term~~ vacancy occurs beginning on the tenth day before the filing period ends under G.S. 163-106(c), and ending on the sixtieth day before the general election, a nomination shall be made by the appropriate district executive committee of each political party and the names of the nominees shall be printed on the general election ballots, without designation as to the vacancy;
- (3) Repealed by Session Laws 1987, c. 485, s. 3.
- (4) The general election ballot shall contain, without designation as to vacancy, spaces for the election ~~of all unexpired terms to fill the vacancy~~ where nominations were made under subdivisions (1) or (2) of this subsection. The persons receiving the highest numbers of votes equal to the ~~unexpired term or terms, term or terms to be filled~~ shall be elected to the ~~unexpired term or terms.~~"

Sec. 23. Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965.

Sec. 24. Part 1 of this act is effective upon ratification, and applies beginning with the 1996 elections, except that Sections 1 and 2 of this act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections. Part 2 of this act becomes effective with respect to elections conducted in 1998 and thereafter. Part 3 of this act is effective upon ratification and applies to vacancies to be filled by elections conducted on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

AN ACT TO ENABLE THE COUNTY OF LINCOLN AND THE CITY OF LINCOLNTON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Lincolnton-Lincoln County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Sec. 2. The Airport Authority shall consist of seven members, three of whom shall be appointed to staggered three-year terms by the Lincolnton City Council and three of whom shall be appointed to staggered three-year terms by the Lincoln County Board of Commissioners and one of whom shall be appointed by the other six members of the Airport Authority. The members appointed by the Lincolnton City Council shall be qualified voters of the City of Lincolnton, and the members appointed by the Lincoln County Board of Commissioners and the Airport Authority shall be qualified voters of the County of Lincoln. Each member shall take and subscribe before the Clerk of Superior Court of Lincoln County an oath of office and file the same with the Lincoln County Board of Commissioners and the Lincolnton City Council.

Sec. 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive compensation, per diem, or otherwise as the Lincolnton City Council or the Lincoln County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority.

Sec. 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the City of Lincolnton or the County of Lincoln.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Lincolnton or the County of Lincoln.
- (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Lincoln County Board of Commissioners and the Lincolnton City Council.
- (7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.
- (11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
- (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and

facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

- (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

- (14) To have a corporate seal, which may be altered at will.

(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Sec. 5. The Airport Authority may acquire from the City and the County, by agreement with the City and County, and the City and County may grant and convey, either by gift or for such consideration as the City and County may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

Sec. 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

Sec. 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

Sec. 8. The Airport Authority shall make an annual report to the Lincoln County Board of Commissioners and the Lincolnton City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Lincoln County or the City of Lincolnton, or any subdivision thereof, or to impose any obligation on Lincoln County or the City of Lincolnton, or any of their subdivisions, except when that power is expressly granted by statute.

Sec. 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Lincoln County Board of Commissioners or the Lincolnton City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Lincoln County and the City of Lincolnton to control, regulate, and provide for the development of aviation in Lincoln County.

Sec. 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Sec. 11. The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Sec. 12. The Lincoln County Board of Commissioners or the Lincolnton City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Lincoln County Board of Commissioners or the Lincolnton City Council.

Sec. 13. The Airport Authority may expend the funds that are appropriated by the County and City for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Sec. 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Sec. 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Lincoln County Board of Commissioners and the Lincolnton City Council, and nothing in this act shall require the Board of Commissioners or City Council to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Lincolnton-Lincoln County Airport Authority.

Sec. 16. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

H.B. 56

CHAPTER 11

AN ACT TO ALLOW HYDE, JONES, NEW HANOVER, PITT, AND SURRY COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1(e), as amended by Chapters 651, 702, 703, 705, and 737 of the 1995 Session Laws, reads as rewritten:

"(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee,

Macon, Madison, Martin, Moore, Nash, New Hanover, Orange, Pasquotank, Pender, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

H.B. 20

CHAPTER 12

AN ACT TO REACTIVATE THE CHARTER OF THE TOWN OF WILSON'S MILLS IN JOHNSTON COUNTY, AND TO ALLOW DEANNEXATION OF AN AREA BY THE TOWN OF FOUR OAKS.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Wilson's Mills is enacted to read:

"CHARTER OF THE TOWN OF WILSON'S MILLS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Wilson's Mills are a body corporate and politic under the name 'Town of Wilson's Mills'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Wilson's Mills are as follows:

"Beginning at a point where the east R/W line of SR 1914 intersects the southern R/W of Hwy 70 bypass. Thence along the southern R/W of 70 bypass in a westerly direction to where it intersects with Kenneth R. Jones (Twin Creek S/D) thence in a southerly direction to the southeastern corner of Tax Parcel 17507015. Thence following along the southern line of Tax Parcel 17507015 to where it intersects the eastern right of way of Swift Creek Rd. thence along the eastern of Swift Creek Road in a southerly direction to where it intersects with the western line of Glenview Acres thence along the lines of Glenview Acres encompassing above said subdivision to the western R/W line of Swift Creek Rd. thence along said right of way in a northerly direction to where it intersects the southern R/W of Hwy 70 bypass, thence along the southern R/W of Hwy 70 bypass to where it meets the southwestern property corner of Tax Parcel 17507009A at a perpendicular angle thence along the western property line of Tax Parcel 17507009A to where it intersects Wilson Mills Rd's northern R/W. Thence along said R/W in a westerly direction to the western boundary of Tax Parcel 17J0602A thence along the western boundaries of Tax Parcels 17J06023A, 17K07005L, 17J06022A and 17J0621 to the northwest corner of 17J0621 thence along the northern and western lines of Tax Parcel 1750621 to where it intersects the southwesterly corner of Tax Parcel

17K07195I thence along the southern property line of Tax Parcel 17K07195I to where it joins Tax Parcel 17K0700SE. Thence along the western and northern line of Tax Parcel 17K0700SE to the eastern R/W of Powhattan Road thence along the eastern R/W of Powhattan Road to where it intersects the northern boundary of Tax Parcel 17K07004A thence with the northern and western line of Tax Parcel 17K07004A to the southeastern corner of Tax Parcel 17K07004A. Thence leaving said point traveling in a northeasterly direction to the northeastern point of Tax Parcel 17K07005A. Thence along a meandering line encompassing Tax Parcels 17K07005B, 17K07195 and 17K08015M to the western R/W of Fire Dept Road thence along the western R/W line of Fire Dept Road to where it intersects the northern boundary of Tax Parcel 17K07013M. Thence along the northern boundary of said parcel to the south eastern corner of Tax Parcel 17K07013M thence along a meandering line encompassing Tax Parcels 17K0714, 17099030F, 17K07016A, 17K07016C, 17K07016F, 17K07016G, 17J06016, 17K07015F, 17K07017A, 17K08024 to the southern R/W of Jones Road thence along the southern right of way of said road to the northeastern corner of Tax Parcel 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A, 17K08026L, 17K08027C, and 17K08026N to the northern right of way of North Carolina Railroad thence along said right of way in an easterly direction to where it intersects the eastern right of way of NCSR 1914 thence along said R/W in a southerly direction to the point and place of beginning.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Wilson's Mills is the Town Council and the Mayor. The Town Council has five members.

"Sec. 3.2. **Manner of Electing Board.** The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. **Term of Office of Council Members.** In 1997, five members of the Council shall be elected. The three persons receiving the highest numbers of votes are elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 1999 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 2001 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3.4. **Selection of Mayor; Term of Office.** The qualified voters of the entire Town elect the Mayor. A Mayor shall be elected in 1997 and quadrennially thereafter for a four-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Mayor-Council Plan.** The Town of Wilson's Mills operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until members of the Town Council are elected in 1997 in accordance with the Town Charter and the laws of North Carolina, Donald Eugene Byrd, George Clifford Uzzle III, Peter Holt Wilson, and Pattie Wilson Caddell shall serve as members of the Town Council and Kenneth Ray Jones shall serve as Mayor. Vacancies in the interim Council shall be filled by appointment made by the remaining members. A vacancy in the office of interim Mayor is filled by appointment made by the interim governing board.

Sec. 3. From and after January 1, 1996, the citizens and property in the Town of Wilson's Mills shall be subject to municipal taxes levied for the year beginning January 1, 1996, and for that purpose the Town shall obtain from Johnston County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1996, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. For fiscal year 1996-97, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1996.

The Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act.

Sec. 4. The Town of Four Oaks may by ordinance repeal any annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes between the date of ratification of this act and June 30, 1997. Such ordinance shall recite that the Town was unable to receive funding to support extension of municipal services. Such ordinance shall be recorded in the same manner as the ordinance it repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

H.B. 18

CHAPTER 13

AN ACT TO REDUCE TAXES FOR THE CITIZENS OF NORTH
CAROLINA AND TO PROVIDE INCENTIVES FOR HIGH QUALITY
JOBS AND BUSINESS EXPANSION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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- I. REDUCE SALES TAX ON FOOD
- II. REDUCE CORPORATE INCOME TAX
- III. QUALITY JOBS AND BUSINESS EXPANSION TAX CREDITS
- IV. PHASE OUT SOFT DRINK TAX
- V. MODIFY BUNDLED TRANSACTION SALES TAX
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- VIII. EXCLUDE CERTAIN SEVERANCE PAY FROM INCOME TAX
- IX. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL
- X. EFFECTIVE DATES

Section 1. This act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

PART I. REDUCE SALES TAX ON FOOD

Sec. 1.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(5) The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Sec. 1.2. G.S. 105-465 reads as rewritten:

"§ 105-465. *County election as to adoption of local sales and use tax.*

The board of elections of any county, upon the written request of the board of county ~~commissioners thereof~~, commissioners, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax ~~as hereinafter provided~~ will be levied.

The special election shall be held under the same rules ~~and regulations~~ applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at ~~said~~ the election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of ~~election elections~~ shall prepare ballots for the special ~~election which shall contain the words, election.~~ The question presented on the ballot shall be 'FOR the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax,' and the words, on items subject to State sales and use tax at the general State rate and on food' or 'AGAINST the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax,' with appropriate squares so that each voter may designate his vote by his cross (X) mark, on items subject to State sales and use tax at the general State rate and on food'.

The county board of elections shall fix the date of the special ~~election; provided, however, election, except~~ that the special election shall not be held on the date or within 60 days of any biennial election for county officers, ~~nor within 60 days thereof~~, nor within one year from the date of the last preceding special election under this section."

Sec. 1.3. G.S. 105-467 reads as rewritten:

"§ 105-467. *Scope of sales tax.*

The sales tax ~~which that~~ may be imposed under this Article is limited to a tax at the rate of one percent (1%) ~~of; of the following:~~

- (1) The sales price of ~~those articles of~~ tangible personal property ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and ~~(4b); (a)(4b).~~
- (2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(2); 105-164.4(a)(2).~~
- (3) The gross receipts derived from the rental of any room or lodging ~~furnished by any hotel, motel, inn, tourist camp or other similar accommodations now~~ subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(3); and 105-164.4(a)(3).~~
- (4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in subdivisions (1) through (4) of this section.

The State exemptions and exclusions contained in G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 shall apply with equal force and in like manner to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for, may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax.

~~The local sales tax authorized to be imposed and levied under the provisions of this Article shall apply to such retail sales, leases, rentals, the rendering of services, furnishing of rooms, lodgings or accommodations and other applies to taxable transactions which are made, furnished or rendered by retailers whose place of business is located within the taxing county. The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."~~

Sec. 1.4. G.S. 105-468 reads as rewritten:

"§ 105-468. *Scope of use tax.*

~~The use tax which may be imposed under~~ authorized by this Article ~~shall be is a tax~~ at the rate of one percent (1%) of the cost price of each item or article of tangible personal property ~~when it that~~ is not sold in the taxing

county but ~~is~~ used, consumed consumed, or stored for use or consumption in the taxing county, ~~except that no tax shall be imposed upon tangible personal property when the property would be taxed by the State at a rate other than the general rate of tax set in G.S. 105-164.4 if it were taxable under G.S. 105-164.6.~~ county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall also collect the one percent (1%) use tax when ~~such the~~ property is to be used, consumed consumed, or stored in the taxing county, one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax. county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the ~~Secretary of Revenue, or to the taxing county, as appropriate,~~ Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary ~~of Revenue or to the taxing county, as appropriate,~~ an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary ~~of Revenue or the taxing county, as appropriate,~~ may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

Sec. 1.5. The first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is amended as follows:

- (1) By deleting the word "and" before subdivision (4).
- (2) By changing the period at the end of subdivision (4) to a semicolon and adding the word "and".
- (3) By adding a new subdivision to read:

"(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Sec. 1.6. Section 5 of Chapter 1096 of the 1967 Session Laws is amended by deleting the first sentence of that section and substituting the following sentences to read:

"The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act."

Sec. 1.7. Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food.

PART II. REDUCE CORPORATE INCOME TAX

Sec. 2.1. G.S. 105-130.3 reads as rewritten:

"§ 105-130.3. *Corporations.*

A tax is imposed on the State net income of every C Corporation doing business in this State ~~at seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income.~~ State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

<u>Income Years Beginning</u>	<u>Tax</u>
<u>In 1997</u>	<u>7.5%</u>
<u>In 1998</u>	<u>7.25%</u>
<u>In 1999</u>	<u>7%</u>
<u>After 1999</u>	<u>6.9%".</u>

Sec. 2.2. G.S. 115C-546.1 reads as rewritten:

"§ 115C-546.1. *Creation of Fund; administration.*

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to ~~two thirty-firsts (2/31)~~ the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars (\$2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

<u>Period</u>	<u>Fraction</u>
<u>10/1/97 to 9/30/98</u>	<u>One-fifteenth (1/15)</u>
<u>10/1/98 to 9/30/99</u>	<u>Two twenty-ninths (2/29)</u>
<u>10/1/99 to 9/30/00</u>	<u>One-fourteenth (1/14)</u>
<u>After 9/30/00</u>	<u>Five sixty-ninths (5/69)</u>

(c) The Fund shall be administered by the Office of State Budget and Management."

PART III. QUALITY JOBS AND BUSINESS EXPANSION TAX CREDITS

Sec. 3.1. Chapter 105 of the General Statutes is amended by adding a new Article 3A entitled "Tax Incentives for New and Expanding Businesses."

Sec. 3.2. G.S. 105-130.40 is recodified as G.S. 105-129.8 in Article 3A of Chapter 105 of the General Statutes.

Sec. 3.3. Article 3A of Chapter 105 of the General Statutes, as enacted by this act, reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"§ 105-129.2. Definitions.

The following definitions apply in this Article:

- (1) Cost. -- Defined in section 179 of the Code.
- (2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.
- (4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (7) Purchase. -- Defined in section 179 of the Code.
- (8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

"§ 105-129.3. Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.
- (2) The county's rank in a ranking of counties by per capita income from highest to lowest.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

"§ 105-129.4. Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community

Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"§ 105-129.5. Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the application for the credit. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax

payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.6. Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce, must specify the credit and the tax against which it will be claimed, and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, specifying the tax against which the credit will be claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for.

"§ 105-129.7. Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. Credit for creating jobs in severely distressed county jobs.

(a) Credit. -- A corporation that (i) for at least 40 weeks during the year has at least nine employees and (ii) is located, for part or all of its taxable

~~year, in a severely distressed county taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation and that hires an additional full-time employee during that year to fill a position located in a severely distressed county this State is allowed a credit of two thousand eight hundred dollars (\$2,800) for the additional employee, for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:~~

<u>Area Enterprise Tier</u>	<u>Amount of Credit</u>
<u>Tier One</u>	<u>\$12,500</u>
<u>Tier Two</u>	<u>4,000</u>
<u>Tier Three</u>	<u>3,000</u>
<u>Tier Four</u>	<u>1,000</u>
<u>Tier Five</u>	<u>500</u>

~~A position is located in a county an area if (i) at least more than fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county, area. The credit may not be taken in the income taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the corporation taxpayer of the number of full-time employees the corporation taxpayer had upon hiring the employee that caused the corporation taxpayer to qualify for the credit. If,~~

~~If, in one of the four years in which the installment of a credit accrues, the number of the corporation's taxpayer's full-time employees falls below the number of full-time employees the company taxpayer had in the year in which the corporation taxpayer qualified for the credit or the position filled by the employee is moved to another county, credit, the credit expires and the corporation taxpayer may not take any remaining installment of the credit. The corporation taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section. G.S. 105-129.5.~~

~~Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.~~

~~For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1) Eligibility. ~~A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year~~

~~1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.~~

~~(c) County Designation. -- A severely distressed county is a county designated as severely distressed by the Secretary of Commerce. Each year, on or before December 31, the Secretary of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the fifty highest in the State.~~

~~The Secretary shall assign to each county in the State a distress factor that is the sum of the following:~~

- ~~(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.~~
- ~~(2) The county's rank in a ranking of counties by per capita income from highest to lowest.~~
- ~~(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.~~

~~In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency, generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. A designation as a severely distressed county is effective only for the calendar year following the designation.~~

~~(d) Planned Expansion. -- A corporation that, during the year in which a county is designated as a severely distressed county, taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the income taxable year after at least twenty employees have been hired if such the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the county is no longer designated a severely distressed county area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is still available, allowed based on the area's enterprise tier for the year the letter was signed. If the corporation taxpayer does not hire the employees within the two-year period, the corporation taxpayer does not qualify for the credit. However, if the corporation taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, it the taxpayer may take the credit under that subsection.~~

~~(e) Limitations. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor corporation may, however, take any~~

~~installment of or carried over portion of a credit that its predecessor could have taken if it had taxable income.~~

~~Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years.~~

~~(f) Substantiation. -- Every corporation claiming the credit provided in subsection (a) shall maintain and make available for inspection by the Secretary of Revenue or his agent such records as may be necessary to determine and verify the amount of the credit to which it is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the corporation, and no credit shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection.~~

"§ 105-129.9. Credit for investing in machinery and equipment.

(a) Credit. -- A taxpayer that has purchased machinery and equipment and places it in service in this State during the taxable year is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

<u>Area Enterprise Tier</u>	<u>Threshold</u>
<u>Tier One</u>	<u>\$ -0-</u>
<u>Tier Two</u>	<u>100,000</u>
<u>Tier Three</u>	<u>200,000</u>
<u>Tier Four</u>	<u>500,000</u>
<u>Tier Five</u>	<u>1,000,000</u>

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer

may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

"§ 105-129.10. Credit for research and development.

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4."

Sec. 3.4. G.S. 105-151.17 is recodified as G.S. 105-129.8. G.S. 105-129.8, as rewritten by this act, incorporates both G.S. 105-130.40 and G.S. 105-151.17.

Sec. 3.5. G.S. 143B-437A reads as rewritten:

"§ 143B-437A. Industrial Development Fund.

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically depressed distressed counties in the State in creating jobs in qualified certain industries. As used in this section, the term 'qualified industry' means the manufacturing of goods or the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following: following provisions, which shall apply to each grant from the fund:

- (1) The funds shall be used for (i) installation of or purchases of equipment for qualified industries, manufacturing or processing, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of qualified industries, manufacturing or processing, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for qualified industrial operations, or (iv) in the case of counties designated as severely distressed counties under G.S. 105-130.40(c) or G.S. 105-151.17(c) or units of local government within those counties, construction of or improvement to new or existing water, sewer, gas, or electrical utility distribution lines or equipment to serve new or proposed industrial buildings to be used for qualified industrial operations, manufacturing or processing operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific qualified industrial manufacturing or processing activity.
- (1a) The funds shall be used for projects located in economically distressed counties except that However, the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county which that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a rate of two thousand four hundred dollars (\$2,400) four thousand dollars (\$4,000) per new job created up to a maximum of two hundred fifty thousand dollars (\$250,000) four hundred thousand dollars (\$400,000) per project.
- (3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.
- (a) Definitions. -- The following definitions apply in this section:
 - (1) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.
 - (2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
 - (3) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (b) Each year, on or before December 31, the Secretary of Commerce shall designate the most economically distressed counties in the State; this

~~designation shall remain effective for the following calendar year. The Secretary of Commerce shall determine which counties are the most economically distressed counties in the State based on (i) rate of unemployment, (ii) per capita income, and (iii) relative population and work force growth or lack of growth, as determined by the Secretary of Commerce.~~

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one areas, as defined in G.S. 105-129.3, in creating jobs in manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for industrial operations in manufacturing or processing, warehousing or distribution, or data processing. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) As used in this section, 'major economic dislocation' means the actual or imminent loss of:

- (1) 500 or more manufacturing jobs in the county; or
- (2) A number of manufacturing jobs which is equal to or more than ten percent (10%) of the existing manufacturing workforce in the county."

Sec. 3.6. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437D. Economic development block grants.

The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants for economic development that will ensure that no local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. 105-129.3 and, to the extent practicable, that priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. 105-129.3."

Sec. 3.7. G.S. 105-241.1(e), as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"(e) Statute of Limitations. -- There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. ~~105-163.014~~, 105-163.014 or Article 3A of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Sec. 3.8. G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient ~~'severely economically distressed counties', as designated under G.S. 105-130.40(e), defined in G.S. 143B-437A~~ for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the

county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. ~~105-130.40(c)~~ 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of severely economically distressed counties made prior to its expiration."

Sec. 3.9. G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in 'severely economically distressed counties', as ~~designated under G.S. 105-130.40(c)~~, defined in G.S. 143B-437A, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. ~~105-130.40(c)~~ 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of severely economically distressed counties made prior to its expiration."

Sec. 3.10. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-437D. *Regional development.*

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State."

Sec. 3.11. Notwithstanding the provisions of G.S. 105-129.10, as enacted by this act, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after the employee is relocated to this State, are considered in-house research expenses in this State for the purposes of G.S. 105-129.10. Notwithstanding the definition of "Code" in G.S. 105-228.90, if the federal tax credit for increasing research activities that was formerly allowed under section 41 of the Code is reenacted, the credit for research and development allowed in Article 3A of Chapter 105 of the General Statutes, as enacted by this act, becomes effective for the same taxable year for which the reenacted federal credit becomes effective.

Sec. 3.12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3B.

"Business Tax Credit.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

- (1) Business property. -- Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) Cost. -- Defined in section 179 of the Code.
- (3) Purchase. -- Defined in section 179 of the Code.

"§ 105-129.16. Credit for investing in business property.

(a) Credit. -- A taxpayer that has purchased business property and places it in service in this State during the taxable year is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. -- A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property.

"§ 105-129.17. Tax election; cap.

(a) Tax Election. -- The credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.18. Substantiation.

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the credit allowed in this Article.
- (2) The cost of business property with respect to which credits were claimed.
- (3) The total cost to the General Fund of the credits claimed."

PART IV. PHASE OUT SOFT DRINK TAX

Sec. 4.1. G.S. 105-113.45, as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"§ 105-113.45. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. -- An excise tax of ~~three-fourths cent (3/4c)~~ at the applicable rate provided in the following table is levied on each bottled soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4c</u>
<u>From 7/1/97 until 6/30/98</u>	<u>1/2c</u>
<u>After 7/1/98</u>	<u>1/4c</u>

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax at the ~~rate of seventy-five cents (75c) a gallon~~ applicable per-gallon rate provided in the table below is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>75c</u>
<u>From 7/1/97 until 6/30/98</u>	<u>50c</u>
<u>After 7/1/98</u>	<u>25c</u>

(d) Dry Base Products. -- An excise tax is levied on each individual container of a dry base product at the rate: at:

- (1) ~~Of three-fourths cent (3/4c) an ounce~~ The applicable per-ounce rate in the table below if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

<u>Date Tax Accrues</u>	<u>Rate</u>
<u>From 7/1/96 until 6/30/97</u>	<u>3/4c</u>

From 7/1/97 until 6/30/98	1/2c
After 7/1/98	1/4c

- (2) ~~That~~ The rate that would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 4.2. Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes.

PART V. MODIFY BUNDLED TRANSACTION SALES TAX

Sec. 5.1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.12B. *Bundled transactions.*

(a) Bundled Transaction Defined. -- A bundled transaction is a transaction in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the seller:
 - a. Does not charge the consumer; or
 - b. Charges the consumer a price that, after any discount or rebate the seller gives the consumer, is below the cost price the seller paid for the item.

(b) Bundled Transaction Is a Sale; Sales Price. -- If a seller transfers an item of tangible personal property as part of a bundled transaction, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer; the remainder of the price is considered paid as part of the price to be paid for the services contracted for. Sales tax is due on any part of the price paid by the consumer at the time of the transfer.

(c) No Additional Sales Tax if Services Taxed. -- If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.

(d) Additional Sales Tax if Services Not Taxed. -- If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and

local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.

(e) Services Taxes Defined. -- For the purpose of this section, the term 'services taxes' means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.

(f) Determination of Cost Price. -- For the purpose of this section, the cost price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices."

PART VI. REDUCE INHERITANCE AND GIFT TAXES

Sec. 6.1. G.S. 105-4(b) reads as rewritten:

"(b) An inheritance tax credit in the amount specified in the following table of thirty-three thousand one hundred fifty dollars (\$33,150) is allowed against the tax imposed by this Article on the transfer of property to a Class A beneficiary.

<u>For Decedents Dying on or After</u>	<u>Amount of Credit</u>
August 1, 1985	\$ 2,350
July 1, 1986	8,150
January 1, 1987	14,150
January 1, 1988	20,150
January 1, 1989	26,150

The credit may not exceed the amount of tax imposed by this Article.

This credit is allowed to Class A beneficiaries in the following order:

- (1) Children who are less than 18 years old, and children who are at least 18 years old and who are single, and are unable to support themselves because of mental or physical incapacity, and either are members of the decedent's household or, because of their mental or physical incapacity, live in an institution.
- (2) Other Class A Beneficiaries. -- The status of a beneficiary is determined as of the date of the decedent's death. When two or more beneficiaries are equally entitled to the credit, the credit shall be allocated among those beneficiaries on a pro rata basis according to their tax liability. The credit allowed by this section may not exceed the amount of tax imposed by this Article."

Sec. 6.2. G.S. 105-3 is amended by adding a new subdivision to read:

"(11) Property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2056(b)(7) of the Code because it is considered qualified terminable interest property."

Sec. 6.3. G.S. 105-188 is amended by adding a new subsection to read:

"(j) The tax does not apply to property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2523(f) of the Code because it is considered qualified terminable interest property."

Sec. 6.4. G.S. 105-2(a) reads as rewritten:

"(a) A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

- (1) When the transfer is from a person who dies seized of the property while a resident of the State and it is made:
 - a. By will or by intestacy;
 - b. Pursuant to a final judgment entered in a proceeding to caveat a will; or
 - c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith, arm's-length compromise of an actual dispute between beneficiaries, heirs, or personal representatives and does not have the primary purpose of avoiding inheritance tax.
- (2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing jurisdiction, including State and municipal bonds, and the decedent was a resident of the State at the time of death; when the transfer is of real property or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, and the decedent was a nonresident of the State at the time of death.
- (3) When the transfer of property made by a resident, or nonresident, is of real property within this State, or of goods, wares and merchandise within this State, or of any other property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has taxing jurisdiction, including State and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (i) the possession or enjoyment of, or the income from, the property or (ii) the right to designate the persons who shall possess or enjoy the property or the income therefrom. The aggregate value exceeding ten thousand dollars (\$10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this section; the first ten thousand dollars (\$10,000) in value shall be deemed not made in contemplation of death.
- (4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident

decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.

- (5) a. For purposes of this Article, the term 'general power of appointment' means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that:
1. A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment.
 2. A power of appointment which is exercisable by the decedent only in conjunction with another person:
 - I.If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.
 - II.If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.
 - III.If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.
 - IV.For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.
- b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:

1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.
 2. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.
 3. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.
- (6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this Article. If in connection with any transfer taxable under this Article the transferor shall give to any person a special power of appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two, among the possible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:
- a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and
 - b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.
- (7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.
- (8) Where the proceeds of life insurance policies are payable as provided in G.S. 105-13.
- (9) Whenever any person or corporation comes into possession or enjoyment of any real or personal property, including bonds of the United States and bonds of a state or subdivision or agency

thereof, at or after the death of an individual and by reason of said individual's having entered into a contract or other arrangement with the United States, a state or any person or corporation to pay, transfer or deliver said real or personal property, including bonds of the United States and bonds of a state, to the person or corporation receiving the same, whether said person or corporation is named in the contract or other arrangement or not: Provided, that no tax shall be due or collected on that portion of the real or personal property received under the conditions outlined herein which the person or corporation receiving the same purchased or otherwise acquired by funds or property of the person or corporation receiving the same, or had acquired by a completed inter vivos gift.

Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.

- (10) Upon the death of a spouse who had a qualifying income interest for life in qualified terminable interest property whose previous transfer was exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-188(j), the qualified terminable interest property that was previously exempt is considered to pass from the spouse to the person who is entitled to the property upon the termination of the spouse's qualifying income interest for life.

However, nothing in this Article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State."

Sec. 6.5. G.S. 105-9(8) reads as rewritten:

- "(8) Costs of administration, including administration not claimed as a deduction on the federal income tax return filed under the Code by the fiduciary for the decedent's estate. Costs of administration include reasonable attorneys' fees."

Sec. 6.6. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section."

PART VII. NONITEMIZER CHARITABLE CONTRIBUTION TAX CREDIT

Sec. 7.1. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to two and three-fourths percent (2.75%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

PART VIII. EXCLUDE CERTAIN SEVERANCE PAY FROM INCOME TAX

Sec. 8.1. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(11) The amount paid to the taxpayer as severance wages as the result of the permanent closure of a manufacturing or processing plant, not to exceed a maximum of thirty-five thousand dollars (\$35,000) for the taxable year."

Sec. 8.2. G.S. 105-134.1 is amended by adding a new subdivision to read:

"(15a) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census."

PART IX. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL

Sec. 9.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity and piped natural gas described in this subdivision and measured by a separate meter or another device:

a. Sales of electricity and piped natural gas to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The

quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

- b. Sales of electricity and piped natural gas to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity and gas to be used for residential heating purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
- c. Sales of electricity and piped natural gas to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service."

Sec. 9.2. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. ~~105-120(e).~~ 105-120(e), other than sales of electricity or piped natural gas subject to tax under another subdivision in this section. Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article."

PART X. EFFECTIVE DATES

Sec. 10.1. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 10.2. This act becomes effective as follows:

- (1) Reduce sales tax on food. -- Part I of this act becomes effective January 1, 1997, and applies to sales made on or after that date.
- (2) Reduce corporate income tax. -- Section 2.1 of Part II of this act is effective for taxable years beginning on or after January 1, 1997. Section 2.2 of Part II of this act becomes effective October 1, 1997, and applies to remittances made on or after that date.
- (3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996,

and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2002. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002.

- (4) Phase out soft drink tax. -- Section 4.1 of Part IV of this act becomes effective July 1, 1997. Section 4.2 of Part IV of this act becomes effective July 1, 1999.
- (5) Modify bundled transaction sales tax. -- Part V of this act becomes effective on the earliest date practicable. The "earliest date practicable" is considered to be the first day of the third month following the ratification of this act. The Part applies to sales made on or after the effective date.
- (6) Reduce inheritance and gift taxes. -- Part VI of this act becomes effective January 1, 1997, and applies to the estates of decedents dying on or after that date and to gifts made on or after that date.
- (7) Nonitemizer charitable contribution tax credit. -- Part VII of this act is effective for taxable years beginning on or after January 1, 1997.
- (8) Exclude certain severance pay from income tax. -- Part VIII of this act is effective for taxable years beginning on or after January 1, 1996.
- (9) Reduce sales tax on farm and industry fuel. -- Part IX of this act becomes effective August 1, 1996, and applies to sales made on or after that date.
- (10) Remainder. -- The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

S.B. 6

CHAPTER 14

AN ACT TO PROVIDE TAX REFORM AND TAX RELIEF FOR THE CITIZENS OF NORTH CAROLINA BY REPEALING THE UNCONSTITUTIONAL CORPORATE TAX CREDIT FOR NORTH CAROLINA WINE, REPEALING THE UNCONSTITUTIONAL CORPORATE TAX DEDUCTION FOR NORTH CAROLINA DIVIDENDS, REPEALING THE UNCONSTITUTIONAL INDIVIDUAL INCOME TAX CREDIT FOR NORTH CAROLINA DIVIDENDS, REVISING THE UNCONSTITUTIONAL TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS, CLARIFYING THE TAX TREATMENT OF REFUNDS OF UNCONSTITUTIONAL TAXES, CLARIFYING THE SALES AND USE TAX TREATMENT OF ITEMS GIVEN AWAY BY MERCHANTS, PROVIDING THE SECRETARY OF REVENUE AUTHORITY TO IMPROVE USE TAX COLLECTION, EXEMPTING FROM SALES AND USE TAX INVENTORY THAT IS DONATED BY A MERCHANT TO A

CHARITABLE NONPROFIT ORGANIZATION, AND REPEALING
MOST STATE PRIVILEGE LICENSE TAXES.

The General Assembly of North Carolina enacts:

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PART I. REFORM UNCONSTITUTIONAL TAX PROVISIONS

Section 1. G.S. 105-130.38 and G.S. 105-151.15 are repealed.

Sec. 2. G.S. 105-151.19 is repealed.

Sec. 3. G.S. 105-130.7 reads as rewritten:

"§ 105-130.7. *Deductible portion of dividends.*

Dividends from stock issued by ~~any~~ a corporation shall be deducted to the extent herein provided, are deductible to the extent provided in this section.

- (1) ~~As soon as may be practicable after September 30 of each year, the Secretary of Revenue shall determine from the corporate income tax return filed during the year ending September 30 by each corporation required to file a return during that period the proportion of the entire net income or loss of the corporation allocable to this State under the provisions of G.S. 105-130.4, except as provided herein. If a corporation has a net income in North Carolina and a net loss from all sources wherever located, or if a corporation has a net loss in North Carolina and a net income from all sources wherever located, the Secretary shall require the use of the allocation fraction determined under the provisions of G.S. 105-130.4. A corporation which is a stockholder in any such corporation shall be allowed to deduct the same proportion of the dividends received by it from such corporation during its income year ending on or after September 30. No deduction shall be allowed for any part of any dividend received from any corporation that was required to file an income tax return during the year ending September 30 but failed to file the return. In the case of dividends received from a corporation that was not required to file a return during the year ending September 30, the proportion of dividends deductible by the stockholder shall be determined by the Secretary from the best information available.~~
- (2) Dividends received by a corporation from stock in any insurance company of this State taxed under the provisions of G.S. 105-228.5 shall be deductible by such corporation, and a proportionate part of any dividends received from stock in any foreign insurance corporation shall be deductible, such part to be determined on the basis of the ratio of premiums reported for taxation in this State to total premiums collected both in and out of this State.

- (3) A corporation ~~shall be allowed to~~ may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.
- ~~(3a) Dividends received on shares of capital stock owned in a stock-owned savings and loan association taxed under Article 8D of this Chapter shall be deductible.~~
- (4) ~~Notwithstanding the provisions of subdivisions (1) through (3a) of this section, a corporation which,~~ A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.
- ~~(5) Notwithstanding any other provisions of this Division, a corporation which is a shareholder in a holding company shall be allowed as a deduction an amount equal to those dividends received by it from such holding company, multiplied by a fraction, the numerator of which shall be the dividends received by such holding company attributable to North Carolina, and the denominator of which shall be the gross dividends received by such holding company; provided, however, that no deduction shall be allowed where the fraction is smaller than one-third (1/3). For purposes of this section, "dividends attributable to North Carolina" shall be the amount of dividend income received by the holding company on stock owned in other corporations equal to the total of the proportion of each of such corporation's dividends as shall be determined deductible by the Secretary under subdivisions (1) through (3a) of this section; provided that a holding company which owns more than fifty percent (50%) of the outstanding voting stock of one or more holding companies as defined in this subdivision shall be permitted a deduction for all dividends received from such holding companies and all other corporations in which it owns more than fifty percent (50%) of the outstanding voting stock except that no deduction shall be allowed if less than one-third (1/3) of the dividends received by the holding company are attributable to North Carolina. A shareholder of such a holding company shall determine the deductible portion of its dividends received from such holding company as hereinabove provided except that the amounts received from a subsidiary holding company as "dividends attributable to North Carolina" shall be determined as though the subsidiary corporation of the subsidiary holding company had paid the dividends directly to the parent holding company. For the purposes of this section and unless the context clearly requires a different meaning, "holding company" shall mean any corporation subject to the tax imposed by G.S. 105-130.3 whose~~

~~ordinary gross income consists of fifty percent (50%) or more of dividend income received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock, and "subsidiary" shall mean any corporation, more than fifty percent (50%) of whose outstanding voting stock is owned by another corporation. For the purposes of this subsection, the term "dividend" includes, in addition to corporate dividends, distributions received from a partnership by a corporation owning more than a fifty percent (50%) interest in the partnership.~~

- (6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation as a result of the application of subdivisions (1) through (3a) ~~under subdivision (3) of this section be in excess of~~ exceed fifteen thousand dollars (\$15,000) for the taxable year."

Sec. 4. G.S. 105-130.5(b)(3) reads as rewritten:

"(3) The deductible portion of dividends from stock ~~issued by any corporation~~ as provided under G.S. 105-130.7."

Sec. 5. G.S. 105-130.4(f) reads as rewritten:

"(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State ~~subject to the following limitations:~~ State. For

- (1) ~~Net dividends received by a corporation from another corporation in which the recipient corporation owns fifty (50%) or more per centum of the paying corporation's voting stock, shall be allocated to this State if the paying corporation is subject to income tax in this State. In such case, the net amount of such dividends received by the recipient corporation from the paying corporation is allocable to this State by use of the same percentage figure used in determining the portion of the paying corporation's dividends deductible under the provisions of G.S. 105-130.7.~~

(2)

~~For purposes of this section, the net amount of dividends shall mean term 'net dividends' means gross dividend income received less related expenses and less that portion of such~~ the ~~dividends deductible under the provisions of G.S. 105-130.7."~~

Sec. 6. G.S. 105-163.012(b) reads as rewritten:

"(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed ~~twelve million dollars (\$12,000,000), six million dollars (\$6,000,000).~~ The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds ~~twelve million dollars (\$12,000,000), six million dollars (\$6,000,000)~~ the Secretary shall allow a portion of the credits claimed ~~on the following basis:~~ by allocating a total of six million dollars (\$6,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer.

- (1) ~~A total of six million dollars (\$6,000,000) in tax credits for investments in North Carolina Enterprise Corporations shall be~~

~~allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.~~

- ~~(2) A total of six million dollars (\$6,000,000) in tax credits for investments in qualified business ventures and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.~~
- ~~(3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars (\$6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars (\$12,000,000)."~~

Sec. 7. Division V of Article 4 of Chapter 105 of the General Statutes, as amended by this act, reads as rewritten:

"DIVISION V. TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

"§ 105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.

The following definitions apply in this Division:

- (1) Affiliate. -- An individual or business that controls, is controlled by, or is under common control with another individual or business.
- (2) Business. -- A corporation, partnership, association, or sole proprietorship operated for profit.
- (3) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.
- (4) Equity security. -- Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.
- (5) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v)

a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.

- (6) Repealed by Session Laws 1991, c. 637.
- (6a) North Carolina Enterprise Corporation. -- A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.
- (6b) Pass-through entity. -- An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.
- (7) Qualified business venture. -- A ~~North Carolina~~ business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (8) Qualified grantee business. -- A ~~North Carolina~~ business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.
- (9) Repealed by Session Laws 1993, c. 443, s. 1.
- (9a) Real estate-related business. -- A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related

business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.

- (9b) Selling or leasing at retail. -- A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.
- (9c) Service-related industry. -- A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.
- (10) Security. -- A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).
- (11) Subordinated debt. -- Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt.

"§ 105-163.011. (*Repealed effective for investments made on or after January 1, 1999*) Tax credits allowed.

(a) No Credit for Brokered Investments. -- No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

~~Corporations. -- Subject to the limitations contained in G.S. 105-163.012, a corporation that purchases the equity securities of a North Carolina Enterprise Corporation directly from the Enterprise Corporation is allowed as a credit for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The credit is allowed against one or more of the following taxes:~~

- (1) ~~The income tax imposed by Division I of this Article.~~

- (2) ~~The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.~~
- (3) ~~The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.~~

~~The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section. This subsection does not apply to a corporation that is also a pass-through entity.~~

(b) Individuals. -- Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of (i) ~~a qualified business venture~~, (ii) ~~a qualified grantee business~~, or (iii) ~~a North Carolina Enterprise Corporation~~ a qualified business venture or a qualified grantee business directly from that ~~entity~~ business is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. -- This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business, business or a qualified business venture, or a North Carolina Enterprise Corporation ~~venture~~ directly from the ~~business or Corporation~~ is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

~~Each corporation that is an owner of a pass-through entity is allowed as a credit for the taxable year an amount equal to the corporation's allocated share of the tax credits for which the pass-through entity is eligible under this subsection as a result of the pass-through entity's investment in equity securities of a North Carolina Enterprise Corporation. The credit is allowed against one or more of the following taxes:~~

- ~~(1) The income tax imposed by Division I of this Article.~~
- ~~(2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.~~
- ~~(3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.~~

~~The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000).~~

~~If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year or if a corporate owner is not eligible for the credit because the investment was not made in a North Carolina Enterprise Corporation, year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.~~

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. -- The penalties provided in G.S. 105-236 apply in this Division.

"§ 105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division I or II of this Article, the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate, Article for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. The fifty thousand dollar (\$50,000) and seven hundred fifty thousand dollar (\$750,000) limitations

limitation on the amount of credit allowed a taxpayer under G.S. 105-163.011 ~~do~~ does not apply to unused amounts carried forward under this subsection.

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed six million dollars (\$6,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds six million dollars (\$6,000,000), the Secretary shall allow a portion of the credits claimed by allocating a total of six million dollars (\$6,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer.

(c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the investment was made. The Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied for but not claimed.

(d) ~~Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the~~ The taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a ~~North Carolina Enterprise Corporation, qualified business venture,~~ venture or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. 'Allowable credit' means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section.

"§ 105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.

(a) Repealed by Session Laws 1993, c. 443, s. 4.

(b) Qualified Business Ventures. -- In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) ~~Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.~~

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting

principles, of five million dollars (\$5,000,000) or less on a consolidated basis.

- (2) ~~It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment eligible for credit under this Division is made.~~
- (3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.
- (4) It does not engage as a substantial part of its business in any of the following:
- Providing a professional service as defined in Chapter 55B of the General Statutes.
 - Construction or contracting.
 - Selling or leasing at retail.
 - The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
 - Providing personal grooming or cosmetics services.
 - Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.
- (5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.
- (6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application ~~and that it has not moved its headquarters or principal business operations out of North Carolina.~~ application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks

approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.

(c) **Qualified Grantee Businesses.** -- In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if ~~all of the following are true as of the date the business files the required application:~~

- ~~(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.~~
- ~~(2) It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment eligible for a credit under this Division is made.~~
- ~~(3) It~~

it has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program.

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection.

(d) **Application Forms; Rules; Fees.** -- Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the

State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The fee for filing an application for registration under this section is one hundred dollars (\$100.00). The fee for filing an application for renewal of registration under this section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of registration under this section is fifty dollars (\$50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided.

(e) Revocation of Registration. -- If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the business. The Secretary of State shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration each year as required under G.S. 105-163.013.

(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, consolidation, or other similar transaction with another business and the surviving corporation would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company.

(g) Report by Secretary of State. -- The Secretary of State shall report to the Legislative Research Commission by October 1 of each ~~odd-numbered year and by February 1 of each even-numbered year~~ all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, the location of its headquarters and principal place of business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S.

143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

"§ 105-163.014. (*Repealed effective for investments made on or after January 1, 1999*) *Forfeiture of credit.*

(a) **Participation in Business.** -- A taxpayer who has received a credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, the taxpayer participates in the operation of the qualified business venture or qualified grantee business. For the purpose of this section, a taxpayer participates in the operation of a qualified business venture or a qualified grantee business if the taxpayer, the taxpayer's spouse, parent, sibling, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business venture or qualified grantee business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides services to a qualified business venture or a qualified grantee business, whether as an officer, a member of the board of directors, or otherwise does not participate in its operation if the person receives as compensation only reasonable reimbursement of expenses incurred in providing the services, participation in a stock option or stock bonus plan, or both.

(b) **False Application.** -- A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business forfeits the credit if the registration of the qualified business venture or qualified grantee business is revoked because information in the registration application was false at the time the application was filed with the Secretary of State.

~~(c) **Location Out of State.** -- A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business does not forfeit the credit if the business fails to renew its registration, except that a taxpayer forfeits the credit if the qualified business venture (i) moves its headquarters or its principal business operations outside this State within three years after the date of the taxpayer's investment or (ii) in the case of a business that promised to move its headquarters and principal business operations to this State as a condition to approval of its registration, fails to comply with this condition.~~

(d) **Transfer or Redemption of Investment.** -- A taxpayer who has received a credit under this Division for an investment in a North Carolina Enterprise Corporation, a qualified business venture, venture or a qualified grantee business forfeits the credit in the following cases:

- (1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:
 - a. The death of the taxpayer.
 - b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
 - c. A merger, consolidation, or similar transaction requiring approval by the shareholders of the North Carolina Enterprise

~~Corporation, qualified business venture, venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.~~

- (2) ~~Within five years after the investment was made, the North Carolina Enterprise Corporation, qualified business venture, venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment.~~

In the event the taxpayer transfers fewer than all the securities in a manner that would result in a forfeiture, the amount of the credit that is forfeited is the product obtained by multiplying the aggregate credit attributable to the investment by a fraction whose numerator equals the number of securities transferred and whose denominator equals the number of securities received on account of the investment to which the credit was attributable. In addition, if the redemption amount is less than the amount invested by the taxpayer in the securities to which the redemption is attributable, the amount of the credit that is forfeited is further reduced by multiplying it by a fraction whose numerator equals the redemption amount and whose denominator equals the aggregate amount invested by the taxpayer in the securities involved in the redemption. The term 'redemption amount' means all amounts paid that are treated as a distribution in part or full payment in exchange for securities under section 302(a) of the Code.

(e) Effect of Forfeiture. -- A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Sec. 8. G.S. 53A-46 is repealed.

Sec. 9. G.S. 105-134.6(d) is amended by adding a new subdivision to read:

- "(3) The taxpayer shall add to taxable income the amount of any recovery during the taxable year not included in taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from taxable income the amount of any recovery during the taxable year included in taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by this Division."

Sec. 10. G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by this Division."

Sec. 10.1. G.S. 105-267 reads as rewritten:

"§ 105-267. *Taxes to be paid; suits for recovery of taxes.*

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this subchapter. Whenever a person ~~shall have~~ has a valid defense to the enforcement of the collection of a ~~tax assessed or charged against him or his property, such tax,~~ the person shall pay such the tax to the proper officer, and such that payment shall be without prejudice to any defense of rights ~~he the person~~ may have ~~in the premises, regarding the tax.~~ At any time within 30 days after payment, the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary of Revenue and if the ~~same shall not be~~ tax is not refunded within 90 days thereafter, may sue the Secretary of Revenue in the courts of the State for the amount ~~so~~ demanded. The protest period for a tax levied in Article 2A, 2B, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

~~Such~~ The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it ~~shall be determined that such a tax or any part thereof is determined that all or part of the tax~~ was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and ~~the same the judgment~~ shall be collected as in other cases. The amount of taxes for which judgment ~~shall be~~ is rendered in such an action shall be refunded by the State; ~~provided, nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2. State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section.~~

PART II. SALES AND USE TAX COLLECTION

Sec. 11. Article V of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.6A. *Voluntary collection of use tax by sellers.*

(a) Voluntary Collection Agreements. -- The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal property for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.

(b) Mandatory Provisions. -- The agreements must contain the following provisions:

- (1) The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.
- (2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.
- (3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period.
- (4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) Optional Provisions. -- The agreements may contain the following provisions:

- (1) The seller will collect the use tax only on items that are subject to the general rate of tax.
- (2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.
- (3) The seller will remit the tax and file reports in the form prescribed by the Secretary.
- (4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements."

Sec. 12. G.S. 105-469 reads as rewritten:

"§ 105-469. *Secretary to collect and administer local sales and use tax.*

(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article.

(b) The Secretary shall require retailers who collect use tax on sales to North Carolina residents to ascertain the county of residence of each buyer and provide that information to the Secretary along with any other information necessary for the Secretary to allocate the use tax proceeds to the correct taxing county."

Sec. 13. G.S. 105-164.3(15) reads as rewritten:

"(15) 'Sale' or "selling" shall mean any selling. -- The transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and paid.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and work. The term also includes the furnishing, preparing, or serving furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal furnishing or preparing the property or consumed at the place at which such the property is prepared, served or sold, furnished or prepared. A transaction whereby The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the ~~price shall be deemed a sale.~~ consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

Sec. 14. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(11a) Prepared food and drink. -- Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption."

Sec. 15. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Sec. 16. G.S. 105-164.13(13a) and (31b) are repealed.

PART III. REPEAL STATE PRIVILEGE LICENSE TAXES

Sec. 17. The following sections of Article 2 of Chapter 105 of the General Statutes are repealed:

- | | |
|---------------|--|
| G.S. 105-36 | Amusements -- Manufacturing, selling, leasing, or distributing moving picture films. |
| G.S. 105-36.1 | Amusements -- Outdoor theatres. |
| G.S. 105-37 | Amusements -- Moving pictures -- Admission. |
| G.S. 105-42 | Private detectives and investigators. |
| G.S. 105-45 | Collecting agencies. |
| G.S. 105-46 | Undertakers and retail dealers in coffins. |
| G.S. 105-50 | Pawnbrokers. |

G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-58	Fortune tellers, palmists, etc.
G.S. 105-60	Day-care facilities.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-70	Packinghouses.
G.S. 105-72	Persons, firms, or corporations selling certain oils.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-75.1	Municipal license tax on barbershops and beauty salons.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

Sec. 18. G.S. 105-33(b) reads as rewritten:

"(b) If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required. ~~For the purpose of this Article, a specialty market is not considered a specialty market vendor's place of business.~~"

Sec. 19. G.S. 105-33(d) reads as rewritten:

"(d) The State license issued under G.S. ~~105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-58, and 105-91 shall be and constitute 105-41~~ is a personal privilege to conduct the profession or business named in the State license, ~~shall not be~~ is not transferable to any other person, firm or corporation and ~~shall be construed to limit the person, firm or corporation~~ person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article or schedule. ~~Other license Article. Other licenses~~ issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a

sufficient license for the succeeding purchaser for the conduct of the business specified at ~~such that~~ location for the balance of the tax year. ~~Provided, that if year.~~ If the holder of a license under this ~~schedule~~ Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued."

Sec. 20. G.S. 105-38(g) is repealed.

Sec. 21. G.S. 105-109.1 reads as rewritten:

"§ 105-109.1. *Interest.*

The taxes on gross receipts levied in G.S. ~~105-37.1(a), 105-37.1(a) and G.S. 105-38(f), and 105-65.1(b)(2),~~ the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid."

Sec. 22. G.S. 153A-152 reads as rewritten:

"§ 153A-152. *Privilege license taxes.*

A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by ~~Schedule B of the Revenue Act (Chapter 105, Subchapter I, Article 2)~~ Article 2 of Chapter 105 of the General Statutes and any other acts of the General Assembly. A county may levy privilege license taxes to the extent formerly authorized by the following sections of Article 2 of Chapter 105 of the General Statutes before they were repealed:

<u>G.S. 105-50</u>	<u>Pawnbrokers.</u>
<u>G.S. 105-53</u>	<u>Peddlers, itinerant merchants, and specialty market operators.</u>
<u>G.S. 105-55</u>	<u>Installing elevators and automatic sprinkler systems.</u>
<u>G.S. 105-58</u>	<u>Fortune tellers, palmists, etc.</u>
<u>G.S. 105-65</u>	<u>Music machines.</u>
<u>G.S. 105-66.1</u>	<u>Electronic video games.</u>
<u>G.S. 105-80</u>	<u>Firearms dealers and dealers in other weapons.</u>
<u>G.S. 105-89</u>	<u>Automobiles, wholesale supply dealers and service stations.</u>
<u>G.S. 105-89.1</u>	<u>Motorcycle dealers.</u>
<u>G.S. 105-90</u>	<u>Emigrant and employment agents.</u>
<u>G.S. 105-102.5</u>	<u>General business license."</u>

Sec. 23. G.S. 160A-211 reads as rewritten:

"§ 160A-211. *Privilege license taxes.*

(a) Authority. -- Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

<u>G.S. 105-36</u>	<u>Amusements -- Manufacturing, selling, leasing, or distributing moving picture films.</u>
<u>G.S. 105-36.1</u>	<u>Amusements -- Outdoor theatres.</u>
<u>G.S. 105-37</u>	<u>Amusements -- Moving pictures -- Admission.</u>
<u>G.S. 105-42</u>	<u>Private detectives and investigators.</u>
<u>G.S. 105-45</u>	<u>Collecting agencies.</u>
<u>G.S. 105-46</u>	<u>Undertakers and retail dealers in coffins.</u>
<u>G.S. 105-50</u>	<u>Pawnbrokers.</u>
<u>G.S. 105-51.1</u>	<u>Alarm systems.</u>
<u>G.S. 105-53</u>	<u>Peddlers, itinerant merchants, and specialty market operators.</u>
<u>G.S. 105-54</u>	<u>Contractors and construction companies.</u>
<u>G.S. 105-55</u>	<u>Installing elevators and automatic sprinkler systems.</u>
<u>G.S. 105-61</u>	<u>Hotels, motels, tourist courts and tourist homes.</u>
<u>G.S. 105-62</u>	<u>Restaurants.</u>
<u>G.S. 105-65</u>	<u>Music machines.</u>
<u>G.S. 105-65.1</u>	<u>Merchandising dispensers and weighing machines.</u>
<u>G.S. 105-66.1</u>	<u>Electronic video games.</u>
<u>G.S. 105-74</u>	<u>Pressing clubs, dry cleaning plants, and hat blockers.</u>
<u>G.S. 105-77</u>	<u>Tobacco warehouses.</u>
<u>G.S. 105-80</u>	<u>Firearms dealers and dealers in other weapons.</u>
<u>G.S. 105-85</u>	<u>Laundries.</u>
<u>G.S. 105-86</u>	<u>Outdoor advertising.</u>
<u>G.S. 105-89</u>	<u>Automobiles, wholesale supply dealers, and service stations.</u>
<u>G.S. 105-89.1</u>	<u>Motorcycle dealers.</u>
<u>G.S. 105-90</u>	<u>Emigrant and employment agents.</u>
<u>G.S. 105-91</u>	<u>Plumbers, heating contractors, and electricians.</u>
<u>G.S. 105-97</u>	<u>Manufacturers of ice cream.</u>
<u>G.S. 105-98</u>	<u>Branch or chain stores.</u>
<u>G.S. 105-99</u>	<u>Wholesale distributors of motor fuels.</u>
<u>G.S. 105-102.1</u>	<u>Certain cooperative associations.</u>
<u>G.S. 105-102.5</u>	<u>General business license.</u>

(b) Barbershop and Salon Restriction. -- A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents (\$2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon."

Sec. 24. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"Peddlers, Itinerant Merchants, and Specialty Markets.

"§ 66-250. Definitions.

The following definitions apply in this Article:

- (1) Itinerant merchant. -- A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

- (2) Peddler. -- A person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.
- (3) Person. -- An individual, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit.
- (4) Specialty market. -- A location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.
- (5) Specialty market operator. -- A person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.
- (6) Specialty market vendor. -- A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market and, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

"§ 66-251. Itinerant merchant and peddler must have permission of property owner.

An itinerant merchant or a peddler who travels from place to place by vehicle must obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. This statement must clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. The statement must be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

"§ 66-252. Display and possession of retail sales tax license.

(a) When Required. -- An itinerant merchant must keep the merchant's retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's retail sales tax license when the peddler offers goods for sale and must produce the license upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its retail sales tax license, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a retail sales tax license be displayed is satisfied if the vendor displays either of the following:

- (1) A copy of the license.

- (2) Evidence that the license has been applied for and the applicable license fee has been paid within 30 days before the date the license was required to be displayed.

"§ 66-253. Display of identification upon request.

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, an itinerant merchant, a specialty market operator, or a specialty market vendor must provide its name and permanent address. A peddler, itinerant merchant, specialty market operator, or specialty market vendor who is an individual must, upon the request of any customer, State or local revenue agent, or law enforcement agent, provide a valid drivers license, a special identification card issued under G.S. 20-37.7, a military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. A peddler, itinerant merchant, specialty market operator, or specialty market vendor that is a corporation must, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the Secretary of State.

"§ 66-254. Records of source of new merchandise.

(a) Record Required. -- Each peddler, itinerant merchant, and specialty market vendor must keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The receipt or invoice must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the receipt or invoice and signing the receipt or invoice. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this section. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

(b) Keeping the Record. -- Each peddler, itinerant merchant, and specialty market vendor must keep the record required by subsection (a) of this section with the new merchandise being offered for sale. Once the new merchandise is sold, the merchant must keep the record for a period of three years after the date of the sale.

(c) Displaying Record or Affidavit. -- A peddler, an itinerant merchant, or a specialty market vendor must produce either of the following upon the request of a law enforcement agent:

- (1) The record required by subsection (a) of this section of the source of new merchandise the merchant offers for sale.

- (2) An affidavit under oath or affirmation identifying the source of new merchandise the merchant offers for sale, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise.

A merchant's failure to produce the requested record or an affidavit within a reasonable time of request by a law enforcement agent is prima facie evidence of possession of stolen property. Pending the production of the requested record or affidavit, the agent may take the merchandise into custody as evidence at the time the request is made. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1.

(d) Posted Notice. -- A specialty market operator must conspicuously post in plain view of all specialty market vendors a sign informing all vendors that failure to produce, upon the request of a law enforcement agent, either the records or affidavit required under this section is prima facie evidence of possession of stolen property.

"§ 66-255. Specialty market registration list.

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and retail sales and use tax registration number. The specialty market operator must require each specialty market vendor to exhibit a valid retail sales tax license for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer.

"§ 66-256. Exemptions from Article.

This Article does not apply to the following:

- (1) A peddler or an itinerant merchant who sells only one or more of the following types of merchandise:
 - a. Farm or nursery products produced by the merchant.
 - b. Crafts or goods made by the merchant.
 - c. The merchant's own household personal property.
 - d. Printed material.
 - e. Wood for fuel.
 - f. Ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies.
- (2) A peddler or an itinerant merchant who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (3) A peddler or an itinerant merchant who is a nonprofit charitable, educational, religious, scientific, or civic organization.

- (4) A peddler who maintains a fixed permanent location from which at least ninety percent (90%) of the peddler's sales are made but who sells some goods in the county of the fixed location by peddling.
- (5) An itinerant merchant who meets any of the following descriptions:
 - a. Locates at a farmer's market.
 - b. Is part of the State Fair or an agriculture fair that is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3.
 - c. Sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (6) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

"§ 66-257. Misdemeanor violations.

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

(1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.

(2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

(1) If the person is an itinerant merchant or a specialty market vendor, fails to display the retail sales tax license as required by G.S. 66-252.

(2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

(1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.

(2) If the person is a peddler or a specialty market operator, fails to produce the retail sales tax license as required by G.S. 66-252.

(3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.

(4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a retail sales tax license was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid retail sales tax license, respectively, that had been issued prior to the time the person was charged.

"§ 66-258. Local regulation not affected.

This Article does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, specialty market vendors, or specialty market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178."

PART IV. EFFECTIVE DATES

Sec. 25. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under either of those statutes for a taxable year beginning on or after January 1, 1996, and before January 1, 1997, with respect to an underpayment of individual or corporation income tax to the extent the underpayment was created or increased by this act.

Sec. 26. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Sec. 27. This act becomes effective as follows:

- (1) **Unconstitutional Tax Preferences.** -- Sections 1 through 5 and 9 and 10 of Part I of this act are effective for taxable years beginning on or after January 1, 1996. Section 10.1 of Part I of this act becomes effective November 1, 1996, and applies to taxes paid on or after that date.
- (2) **Cap on Qualified Investments.** -- Section 6 of Part I of this act is effective for investments made on or after January 1, 1996.
- (3) **Modify Qualified Business Investment Credits.** -- Sections 7 and 8 of Part I of this act become effective for investments made on or after January 1, 1997.
- (4) **Sales and Use Tax Collection.** -- Part II of this act becomes effective August 1, 1996.
- (5) **Repeal State Privilege License Taxes.** -- Part III of this act becomes effective July 1, 1997.
- (6) **Remainder.** -- The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

H.B. 61

CHAPTER 15

AN ACT TO APPOINT PERSONS TO PUBLIC OFFICE UPON THE RECOMMENDATION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Ms. Susan Goldstone of Forsyth County is appointed to the Acupuncture Licensing Board for a term expiring June 30, 1999.

Sec. 2. Ms. Lois Jean O'Keefe of Carteret County, Mr. Robert J. Beason of New Hanover County, Mr. Daniel Martin, III of New Hanover County, and Mr. H. Edward Browning of Washington County are appointed to the North Carolina Aquariums Commission for terms expiring July 1, 2000.

Sec. 3. Mrs. Anne Shumaker of Franklin County (parent member) is appointed to the Child Day Care Commission for a term expiring June 30, 1998.

Sec. 4. Mrs. Ann Boney of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring June 30, 1998.

Sec. 5. Mr. McKeithan Jones of Robeson County and Mr. Joe Hege of Davidson County are appointed to the Southeastern North Carolina Farmers Market Commission for terms expiring July 1, 1999.

Sec. 6. Mr. Joseph Meacci of Moore County is appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for a term expiring June 30, 1998.

Sec. 7. Ms. Suzanne Freeman of Mecklenburg County and Ms. Polly Godwin of Wake County are appointed to the North Carolina Center for Nursing Board of Directors for terms expiring June 30, 1999.

Sec. 8. Dr. G. Robert Horton of Moore County and Ms. Drane McCall of Forsyth County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 1998.

Sec. 9. Mr. Patrick Joyce of Carteret County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 1998.

Sec. 10. Mr. Tobin Henry of Mecklenburg County is appointed to the Private Protective Services Board for a term expiring June 30, 1999.

Sec. 11. Mr. Tom Keith of Cumberland County is appointed to the North Carolina Appraisal Board for a term expiring June 30, 1999.

Sec. 12. Mr. Paul Powell of Wake County is appointed to the Rules Review Commission for a term expiring June 30, 1998.

Sec. 13. Mr. Graham Cawthorne, Jr. (Public, nonsoils) of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring June 30, 1999.

Sec. 14. Ms. Jeannie Metcalf of Forsyth County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 2000.

Sec. 15. Mr. Charles T. Wilson, Jr. of Durham County is appointed to the State Building Commission for a term expiring June 30, 1999.

Sec. 15.1. Ms. Peggy Pruett of Forsyth County is appointed to the North Carolina State Board of Therapeutic Recreation Certification for a term expiring June 30, 1999.

Sec. 16. G.S. 93E-1-5(a) reads as rewritten:

"(a) There is created the North Carolina Appraisal Board for the purposes set forth in this Chapter. The Board shall consist of seven members. The Governor shall appoint five members of the Board, and the General Assembly shall appoint two members in accordance with G.S. 120-121, one upon the recommendation of the President Pro Tempore of the Senate and one upon the recommendation of the Speaker of the House of Representatives. Each member appointed by the Governor shall be appointed

from a different congressional district. The appointee recommended by the Speaker of the House of Representatives and the appointees of the Governor shall be persons who have been engaged in the business of real estate appraising in this State for at least five years immediately preceding their appointment and are also State-licensed or State-certified real estate appraisers. No more than ~~three~~ four of the appointees may be members of the same appraiser trade organization, group, or committee at any one time. The appointee recommended by the President Pro Tempore of the Senate shall be a person not involved directly or indirectly in the real estate, real estate appraisal, or the real estate lending industry. Members of the Board shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of two members expire in the next year, and the terms of two members expire in the third year of each three-year period. The members of the Board shall elect one of their members to serve as chairman of the Board for a term of one year. The Governor may remove any member of the Board appointed by the Governor for misconduct, incompetency, or neglect of duty. The General Assembly may remove any member appointed by it for the same reasons. Successors shall be appointed by the appointing authority making the original appointment. All vacancies occurring on the Board shall be filled, for the unexpired term, by the appointing authority making the original appointment. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Initial terms of office commence July 1, 1994."

Sec. 16.1. G.S. 143B-313.2(a) reads as rewritten:

"(a) Membership. -- The North Carolina Parks and Recreation Authority shall consist of ~~nine~~ 11 members. The members shall include persons who are knowledgeable about park and recreation issues in North Carolina or with expertise in finance. Three members shall be appointed by the Governor, ~~three~~ four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and ~~three~~ four members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The members shall serve at the pleasure of the appointing authority. The Governor shall appoint one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies shall be appointed by the original appointing authority, and the term shall be for the balance of the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and place as designated by the Chair, but no less frequently than quarterly."

Sec. 17. Except as otherwise provided, all appointments made by this act are for terms commencing upon ratification.

Sec. 18. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

S.B. 9

CHAPTER 16

AN ACT TO AUTHORIZE THE PENDER COUNTY BOARD OF EDUCATION TO CONVEY CERTAIN PROPERTY AT PRIVATE SALE TO THE MAPLE HILL CIVIC CLUB, INC., A NONPROFIT CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 115C-518(a) and Article 12 of Chapter 160A of the General Statutes, the Pender County Board of Education may convey at private sale, with or without monetary consideration, any or all of its right, title, and interest in the old Maple Hill School, consisting of the property described in a deed recorded at Book 358, Page 417 of the Pender County Registry, to the Maple Hill Civic Club, Inc., a nonprofit corporation.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

S.B. 16

CHAPTER 17

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO ABOLISH THE HEALTH CARE REFORM COMMISSION, AND TO AMEND THE LAWS GOVERNING CORPORATE REINSTATEMENT AFTER DISSOLUTION.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1996".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1995-1996 Regular Sessions of the 1995 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study.

(a) State's role in responding to federally-declared disasters (Hayes; J. Robinson).

(b) Employment Security Law Issues (Cochrane and Gulley). The Legislative Research Commission's Employment Security Law Committee, created pursuant to Section 5 of Chapter 1 of the 1995 Session Laws, 1996 Extra Session, may consider the following:

- (1) The amount of money that should be maintained in the Unemployment Insurance Fund to meet anticipated claims and to maintain an adequate reserve.
- (2) Whether automatic statutory mandates can be used to make adjustments in collections in order to maintain the fund.
- (3) What steps can be taken under existing law to curb abuses in the unemployment compensation system, such as those that may result from construction industry layoffs during periods of inclement weather or the vacation season and whether legislation is needed.
- (4) Comparing the interest rate earned on the national and State unemployment insurance funds and determining the reasons for any differences, if they exist.
- (5) The fairness of the present formula and rates establishing employment compensation, including that of basing a claimant's entitlement to benefits on a movable base period that would include information on wages earned from the latest available quarter rather than on wages earned during the first four of the last five quarters prior to filing under the current system.
- (6) Comparing North Carolina's formula and rate of unemployment compensation to those of other states.

(c) Licensing Boards (Little). The study may consider the following: the need for the existence of all of the licensing boards, the necessity and feasibility of regular audits by the State Auditor, the responsiveness, efficiency, and accountability of licensing boards, and any other issues relevant to licensing boards and departmental agencies that issue occupational licenses.

(d) Increasing North Carolina's Minimum Wage (Rand and Gulley). The Legislative Research Commission may study issues relating to increasing the State's minimum wage. If this study is undertaken, the Commissioner of Labor shall be a nonvoting, ex officio member of the committee assigned this issue. The study may consider:

- (1) The economic and other evidence relevant to the federal legislation pending before Congress that would increase the federal minimum wage to \$5.15 per hour by July 1, 1997.
- (2) Whether North Carolina should continue to have its minimum wage track with the federal minimum wage.

(e) Liability for county departments of social services' negligence, including the following issues: county immunity from suit; waiver of immunity through the purchase of liability insurance, including the effect of requiring the purchase of liability insurance; and State liability for county negligence when a county is deemed immune (Gammons v. N.C. Department of Human Resources) (Gardner; Martin of Guilford).

(f) The impact of the Supreme Court's decision in Craven County Board of Education v. Boyles on civil penalties, forfeitures, and fines collected by State agencies (Rand and Gulley).

(f1) The related and vital issues of education and placement in the training schools run by Division of Youth Services, Department of Human Resources, in order to determine how to ensure that education and

placement are adequate and appropriate for all training school students, including Willie M. students.

(g) Allowing property tax refunds for overpayments due to clerical, measurement, or computational errors in appraisal of property (S.B. 1019 - Dannelly).

(h) Block grant awards by the Small Cities Community Block Grant Program (S.B. 1287 - Winner; H.B. 1365 - Easterling).

(i) Public cooperation with the nonprofit sector (H.J.R. 1167 - McMahan).

(j) Alternatives for Providing Permanent Dedicated Sources of Revenue for Affordable Housing (Gulley; S.B. 10 from the 1996 Second Extra Session - Jordan; H.B. 59 from the 1996 Second Extra Session - Shaw). The study may consider:

- (1) Possible sources of revenue for permanent, dedicated funding for the perpetuation of the North Carolina Housing Trust Fund.
- (2) Permanent, dedicated funding for the Center for Community Self-Help's Home Ownership Expansion Program.
- (3) Funding of capacity building grants for nonprofit, tax-exempt housing providers.
- (4) Other significant initiatives and resources supporting and encouraging the availability of affordable housing in North Carolina.

(k) The role of North Carolina in global affairs, including the areas of international business, tourism, cultural affairs, and educational affairs, and including the need for long-term, strategic planning in these areas (S.B. 1471 - Plexico).

(l) Department of Environment, Health, and Natural Resources.-- The study may consider:

- (1) Reorganization of the Department of Environment, Health, and Natural Resources.
- (2) Duplication in or inconsistencies between State and federal environmental regulations.
- (3) Alternative permitting and compliance mechanisms.
- (4) Other issues relating to the administration and enforcement of State and federal environmental laws, regulations, policies, and programs.

Sec. 2.2. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochair of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.3. Reporting Date. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1997 General Assembly, if approved by the cochairs.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART III.-----CHILD FATALITY TASK FORCE CONTINUED (Perdue; S.B. 1288, S.B. 31 from the 1996 Second Extra Session - Winner; Sharpe; H.B. 1315 - Easterling)

Sec. 3.1. G.S. 143-577(b) reads as rewritten:

"(b) The Task Force shall ~~provide updated reports~~ make a written report to the Governor and General Assembly within the first week of the convening of the 1993 General Assembly, within the first week of the convening of the 1994 Regular Session of the 1993 General Assembly, within the first week of the convening of the 1995 General Assembly, and within the first week of the convening of the 1996 Regular Session of the 1995 General Assembly. The Task Force shall provide a final report to the Governor and General Assembly within the first week of the convening of the 1997 General Assembly, within the first week of the convening of the 1997 General Assembly. The Task Force may make a written report to the Governor and General Assembly within one week of the convening of the 1998 Regular Session of the 1997 General Assembly. The Task Force shall make a final written report to the Governor and General Assembly within the first week of the convening of the 1999 General Assembly. The final report shall include final conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, and policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State."

Sec. 3.2. Section 285(e) of Chapter 321 of the 1993 Session Laws, as amended by Section 27.8(b) of Chapter 769 of the Session Laws of 1993 (1994 Regular Session) reads as rewritten:

"(e) Subsections (b), (c), and (d) of this section become effective February 1, ~~1997~~, 1999. The remainder of this section is effective upon ratification."

PART IV.-----CIVIL PROCEDURE STUDY COMMISSION (S.B. 1232 - Rand and Gulley; Daughtry; H.B. 1333 - Neely)

Sec. 4.1. (a) The Civil Procedure Study Commission is created. The Commission shall consist of 18 voting members: six members to be appointed by the President Pro Tempore of the Senate, six members to be appointed by the Speaker of the House of Representatives, and six members to be appointed by the Chief Justice of the North Carolina Supreme Court. No more than four members appointed by the President Pro Tempore of the Senate and no more than four members appointed by the Speaker of the House of Representatives may be members of the General Assembly. No more than four of the members appointed by any one of the three appointing authorities may be members of the same political party.

(b) The Commission shall:

- (1) Study all practices and procedures that affect the speed, fairness, and accuracy with which civil actions are disposed of in the trial divisions of the General Court of Justice, including the rules of civil procedure, rules of evidence, other relevant statutes, statewide and local court-adopted rules of practice and procedure, administrative rules, appellate opinions and all other relevant practices, customs, and traditions in the trial courts of North Carolina; and
- (2) Devise and recommend improved practices and procedures that (i) reduce the time required to dispose of civil actions in the trial divisions; (ii) simplify pretrial and trial procedure; (iii) guarantee the fairness and impartiality with which the claims and defenses are heard and resolved; and (iv) increase the parties' and the public's satisfaction with the process of civil litigation.
- (c) The Commission shall report to the General Assembly and the Chief Justice no later than April 1, 1998. The report shall be in writing and shall set forth the Commission's findings, conclusions, and recommendations, including any proposed legislation or court rules. Upon issuing its final report, the Commission shall terminate.

(d) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one of their appointees to serve as cochairs. The Commission shall meet at such times and places as the cochairs designate. The facilities of the State Legislative Building and Legislative Office Building shall be available to the Commission, subject to the approval of the Legislative Services Commission. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set forth in G.S. 138-6. All other members shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5.

(e) The Commission may solicit, employ, or contract for technical assistance and clerical assistance, and may purchase or contract for the materials and services it needs. Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Commission without cost except for travel, subsistence, supplies, and materials.

Sec. 4.2. Of the funds appropriated to the General Assembly for the 1996-97 fiscal year the sum of twenty-five thousand dollars (\$25,000) shall be allocated to implement the provisions of this Part.

PART V.-----CRIMINAL PROCEDURE STUDY COMMISSION (S.B. 1233 - Rand and Gulley; Daughtry; H.B. 1361 - Neely)

Sec. 5.1. (a) The Criminal Procedure Study Commission is created. The Commission shall consist of 18 voting members: six members to be appointed by the President Pro Tempore of the Senate, six members to be appointed by the Speaker of the House of Representatives, and six members to be appointed by the Chief Justice of the North Carolina Supreme Court. No more than four members appointed by the President Pro Tempore of the

Senate and no more than four members appointed by the Speaker of the House of Representatives may be members of the General Assembly. No more than four of the members appointed by any one of the three appointing authorities may be members of the same political party.

(b) The Commission shall:

(1) Study all practices and procedures that affect the trial and disposition of criminal prosecutions in the trial divisions of the General Court of Justice, including the Criminal Procedure Act, rules of evidence, other relevant statutes, statewide and local court-adopted rules of practice and procedure, administrative rules, appellate opinions and all other relevant practices, customs, and traditions in the trial courts of North Carolina; and

(2) Devise and recommend improved practices and procedures that (i) reduce the time required to dispose of criminal prosecutions in the trial divisions; (ii) simplify pretrial and trial procedure; (iii) guarantee the full realization of the interests of the State, the rights of criminal defendants, and the concerns of victims and others affected by the criminal trial process; and (iv) increase the parties' and the public's satisfaction with the process of criminal justice in the trial courts.

(c) The Commission shall report to the General Assembly and the Chief Justice no later than April 1, 1998. The report shall be in writing and shall set forth the Commission's findings, conclusions, and recommendations, including any proposed legislation or court rules. Upon issuing its final report, the Commission shall terminate.

(d) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one of their appointees to serve as cochairs. The Commission shall meet at such times and places as the cochairs designate. The facilities of the State Legislative Building and Legislative Office Building shall be available to the Commission, subject to the approval of the Legislative Services Commission. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set forth in G.S. 138-6. All other members shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5.

(e) The Commission may solicit, employ, or contract for technical assistance and clerical assistance, and may purchase or contract for the materials and services it needs. Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Commission without cost except for travel, subsistence, supplies, and materials.

Sec. 5.2. Of the funds appropriated to the General Assembly for the 1996-97 fiscal year the sum of twenty-five thousand dollars (\$25,000) shall be allocated to implement the provisions of this Part.

PART VI. Reserved.

PART VII.-----EXPENDITURE MODEL (Odom)

Sec. 7.1. Expand and Upgrade the General Assembly Expenditure Model for General and Highway Funds and Federal Funds. A special subcommittee of the Legislative Services Commission shall be appointed to oversee and coordinate the expansion and upgrade of the financial models. The President Pro Tempore of the Senate shall appoint two Senate members of the Legislative Services Commission to the subcommittee and the Speaker of the House shall appoint two House members of the Legislative Services Commission to the subcommittee. The subcommittee shall develop and issue a Request for Qualifications document to interested contractors for the purpose of presenting to the subcommittee, for recommendation to the Commission, a suggested approach, statement of qualifications, together with cost estimates, to prepare and benchmark specific upgrades and other "user-friendly" improvements (e.g., graphics, drop down lists, "windows-like" applications and "touch screen" technology) to the current General Fund Financial Model and Highway Fund Financial Model.

These upgrades will include special components which would work seamlessly with the existing models and further improve their value to legislative and executive branch policymakers. To the extent that unused and unencumbered capital improvement funds are available, the Legislative Services Commission may execute a competitive or sole source bid process and enter into a contract with a qualified consulting or research organization to assist with production and delivery of the upgrades and other components described herein. In the event of limitations of funds to contract for all upgrades or components, prior to the beginning of fiscal year 1997-98, the subcommittee shall recommend to the Commission which projects should be considered first for improvement or expansion. In addition to the upgrades cited above, the following model components shall be developed:

(a) Compensation. A compensation component which shall simulate and estimate the fiscal effect of proposed changes in salaries and benefits packages including, but not limited to, social security, leave, disability, retirement, health insurance, and death benefits for the following categories of employees paid by the State of North Carolina:

- (1) Certified public school employees; noncertified public school employees;
- (2) University faculty and nonfaculty employees;
- (3) Community college personnel (faculty and nonfaculty);
- (4) Judicial employees; and
- (5) All other executive branch employees.

(b) Federal Funds. Working with the Federal Funds Model (FFM), jointly operated by the National Governors' Association and the National Conference of State Legislatures, the contractor shall develop, with the Office of State Budget and Management and the Fiscal Research Division, automated reports that will utilize formulas to estimate the effects of increases or decreases in federal funds on General or Highway Fund receipts over any successive 10-year period, including estimating where possible, the effect of these changes on local government "pass-through" funding. This component will be benchmarked with the FFM staff in Washington, using most recent congressional actions.

(c) Medicaid and Other Federal Entitlements Funding. Within this Federal Funds Model described in subsection (b) of this section, the Office of Budget and Management and the Fiscal Research Division, working with the Division of Medical Assistance of the Department of Human Resources shall develop and enhance a Medicaid expenditures and receipts forecasting component for use with the General Fund Forecasting Model to determine the effect of congressional decisions on the State's share of Medicaid funding, and the resulting potential effect on local government share.

Sec. 7.2. Design, Access, Use, Maintenance, and Upgrade of Models.

(a) The Legislative Services Commission, at the request of the Governor, shall allow access and use of the General Highway and Federal Funds Models to executive branch policy and decision makers. These models may be used to illustrate, indicate, or simulate an outcome or series of outcomes that reasonably may be expected to result from the application of selected revenue or expenditure assumptions, conditions, or changes to a current or proposed budget. These simulations shall not be deemed as formal predictions or statistically reliable forecasts. [Reports of simulations may be construed as indicators of potential future outcomes, if the specific assumptions used to produce the simulation occurred exactly as applied.]

Any and all assumptions affecting estimated revenues or expenditures in any State funds shall be set out clearly in any explanation of any fiscal conditions proposed or simulated using the models. These assumptions or conditions shall include, but are not limited to, increases or decreases in:

- (1) Tax and nontax revenue;
- (2) Debt service;
- (3) Expenditures;
- (4) Enrollments (public schools, universities, community colleges);
- (5) Inflation;
- (6) Inmate populations, probationers, parolees;
- (7) Caseloads in AFDC, Medicaid, courts, public health, mental health, State health plan, and other State service programs;
- (8) Salary, wages, (private sector); and
- (9) Other (demographics, natural disasters).

(b) Subject to the approval of the Legislative Services Commission, the Director of the Fiscal Research Division and the State Budget Officer or the Governor shall establish written procedures and standards for the design, access, use, maintenance and upgrade of the models and any of their components, except that members of the General Assembly, upon request, shall have direct, personal access to the models.

PART VIII.-----FISHERMEN'S DISASTER RELIEF FUND STUDY
(Perdue; J. Robinson)

Sec. 8.1. The Joint Legislative Commission on Seafood and Aquaculture, established pursuant to G.S. 120-70.60, shall study the feasibility of creating a Fishermen's Disaster Relief Fund to provide financial assistance to fishermen for damage to fishery resources caused by natural or man-made disasters. The Commission shall report its findings and recommendations, if any, to the 1997 General Assembly upon its convening.

PART IX.-----GENERAL STATUTES COMMISSION TO STUDY REMOVAL OF ANTIQUATED LAWS (Gulléy)

Sec. 9.1. The General Statutes Commission established pursuant to Article 2 of Chapter 164 shall study and identify antiquated laws in the North Carolina General Statutes and make recommendations regarding removal of those laws from the books.

Sec. 9.2. The Commission shall report its findings and recommendations to the 1997 General Assembly upon its convening.

PART X.-----INDUSTRIAL COMMISSION SALARY LEVELS STUDY (Plyler and Perdue)

Sec. 10.1. The State Auditor shall study, in conjunction with the scheduled performance audit of the North Carolina Industrial Commission, the salary levels of the Chairman and members of the North Carolina Industrial Commission as well as that of Deputy Commissioners, the Executive Secretary, and Administrator of the North Carolina Industrial Commission. In accomplishing this study, the State Auditor shall consult the Office of State Personnel, the North Carolina Industrial Commission Advisory Council, and the North Carolina Bar Association and shall review the compensation of Industrial Commissioners and staff in other southeastern states. The State Auditor shall report the results of this study and its recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Natural and Economic Resources by January 15, 1997. The State Auditor shall also submit a copy of the report to the Legislative Library.

PART XI.-----MEDICAID TASK FORCE CONTINUED (S.B. 1334 - Martin of Guilford; H.B. 1318 - Esposito)

Sec. 11.1. Effective May 1, 1996, Section 23.5A(d) of Chapter 507 of the 1995 Session Laws reads as rewritten:

"(d) The task force shall report the results of its study, together with any legislative proposals and cost analyses, to the 1995 General Assembly, Regular Session 1996, within a week of its ~~convening or convening~~, to a special session of the 1995 General Assembly called to deal with federal block grant funding ~~issues~~, issues, or to the 1997 General Assembly within a week of its convening. The Task Force shall terminate upon filing its final report."

PART XII.-----STATE PORTS STUDY COMMISSION CONTINUATION (S.B. 1109 - Perdue; H.B. 1175 - McComas)

Sec. 12.1. Effective May 1, 1996, Section 16.1(e) of Chapter 542 of the 1995 Session Laws reads as rewritten:

"(e) The Commission shall report the results of its study and its recommendations to the ~~1995 General assembly by May 1, 1996~~, General Assembly. The Commission may make an interim report to the 1996 Regular Session of the 1995 General Assembly and shall make a final report upon the convening of the 1997 General Assembly. The Commission shall terminate upon filing its final report."

PART XIII.-----STATE EMPLOYEE PERSONNEL COMPENSATION STUDY COMMISSION (Russell)

Sec. 13.1. (a) The State Employee Personnel Compensation Study Commission is created. The Commission shall consist of 10 members: five appointed by the President Pro Tempore of the Senate, at least three of whom shall be members of the Senate, and five appointed by the Speaker of the House of Representatives, at least three of whom shall be members of the House. The Speaker of the House shall designate one Representative as a cochair and the President Pro Tempore of the Senate shall designate one Senator as a cochair. Vacancies shall be filled by the initial appointing officer.

The Commission shall study the following with respect to the compensation of State employees:

- (1) Salary inequities within ranges.
- (2) Private sector pay versus public sector pay.
- (3) Longevity.
- (4) Benefits.
- (5) Hiring rates (employees hired above the range).
- (6) Other states' public employees compensation packages, including comparison and ranking of North Carolina's package.
- (7) Factors affecting employees' salary and benefits.
- (8) Effect of across-the-board salary increases.
- (9) Means of determining a salary increase for State employees based on a predetermined amount in lieu of appropriating monies left available at the end of the budget process.

(b) The Commission shall meet upon the call of the cochairs. A quorum of the Commission is six members.

(c) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

(d) The Legislative Administrative Officer shall assign as staff to the Commission professional employees of the General Assembly. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The Commission may meet in the Legislative Building or the Legislative Office Building with the approval of the Legislative Services Commission.

(e) The Commission shall report the results of its study and recommendations to the 1997 General Assembly upon its convening. The Commission shall terminate upon filing the report.

Sec. 13.2. From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Commission under this Part.

PART XIV.-----RAIL SAFETY INSPECTION SERVICES STUDY (S.B. 1255 - Hoyle; H.B. 1172 - Morgan)

Sec. 14.1. The Secretary of Transportation shall study the provision of rail safety inspection services in North Carolina by the State and the Federal Railroad Administration and shall recommend to the General

Assembly no later than June 1, 1997, whether the State should continue to perform this service. The recommendation shall be contained in a report filed with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Library.

Sec. 14.2. The Department of Transportation shall conduct this study within available funds.

PART XV.-----CORPORATE REINSTATEMENT AFTER DISSOLUTION (Rand)

Sec. 15.1. (a) The General Statutes Commission shall study the issue of administrative dissolution and reinstatement after dissolution of corporations, nonprofit corporations, and limited liability companies. In particular, the Commission shall study the extension of time in which corporations, nonprofit corporations, and limited liability companies may apply for reinstatement after dissolution. The Commission shall report its findings and recommendations to the General Assembly on or before March 1, 1997.

(b) Section 7 of Chapter 539 of the 1995 Session Laws reads as rewritten:

"Sec. 7. Effective ~~July 1, 1996~~, July 1, 1997, G.S. 55-14-22(a), as amended by Section 6 of this act, reads as rewritten:

'(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

(c) Section 38(b) of Chapter 539 of the 1995 Session Laws reads as rewritten:

"(b) Section 7 of this act becomes effective ~~July 1, 1996~~, July 1, 1997, and applies to applications for reinstatement on or after that date. Section 25 of this act becomes effective July 1, 1996, and applies to proceedings commenced on or after that date."

(d) G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for ~~reinstatement within two years after the effective date of dissolution~~, reinstatement. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

(e) G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for ~~reinstatement within two years after the effective date of the administrative dissolution~~, reinstatement. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same

procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

(f) This section becomes effective June 30, 1996, and subsections (d) and (e) of this section expire July 1, 1997.

PART XVI.-----ABOLITION OF HEALTH CARE REFORM COMMISSION (Morgan)

Sec. 16.1. The North Carolina Health Care Reform Commission, created in Article 65 of Chapter 143 of the General Statutes, is abolished.

Sec. 16.2. G.S. 143-610, 143-611, 143-612A, and 143-614 are repealed. The title to Article 65 reads as rewritten:

"North Carolina Health Care Reform Commission, Medical Education and Primary Care."

Sec. 16.3. Article 68A of Chapter 58 of the General Statutes (Health Care Reform Planning) is repealed.

Sec. 16.4. G.S. 93B-12 reads as rewritten:

"§ 93B-12. Information from licensing boards having authority over health care providers."

(a) Every occupational licensing board having authority to license physicians, physician assistants, nurse practitioners, and nurse midwives in this State shall modify procedures for license renewal to include the collection of information specified in this section for each board's regular renewal cycle. The purpose of this requirement is to assist the State in tracking the availability of health care providers to determine which areas in the State suffer from inequitable access to specific types of health services and to anticipate future health care shortages which might adversely affect the citizens of this State. Occupational licensing boards, ~~in consultation with the North Carolina Health Care Reform Commission,~~ boards shall collect, report, and update the following information:

- (1) Area of health care specialty practice;
- (2) Address of all locations where the licensee practices; and
- (3) Other information the occupational licensing board ~~in consultation with the North Carolina Health Care Reform Commission~~ deems relevant to assisting the State in achieving the purpose set out in this section, including social security numbers for research purposes only in matching other data sources.

(b) Every occupational licensing board required to collect information pursuant to subsection (a) of this section shall report and update the information on an annual basis to the ~~North Carolina Health Care Reform Commission,~~ Department of Human Resources. ~~The Commission~~ Department shall provide this information to programs preparing primary care physicians, physicians assistants, and nurse practitioners upon request by the program and by the Board of Governors of The University of North Carolina. Information provided by the occupational licensing board pursuant to this subsection may be provided in such form as to omit the identity of the health care licensee."

Sec. 16.5. Part XII of Chapter 542 of the 1995 Session Laws (North Carolina Health Care Reform Commission studies) is repealed.

Sec. 16.6. Any unencumbered and unexpended funds appropriated to the North Carolina Health Care Reform Commission shall revert to the General Fund.

Sec. 16.7. This Part becomes effective January 1, 1997.

PART XVII.-----WELFARE REFORM (Basnight; Martin of Guilford; Berry; Howard; Gray)

Sec. 17.1. (a) Section 47 of Chapter 24 of the 1993 Session Laws, Extra Session 1994, as continued and amended by Section 23.8B of Chapter 507 of the 1995 Session Laws, and as amended by Part XXIII, Section 23.1 of Chapter 542 of the 1995 Session Laws, reads as rewritten:

"(a) There is created the Legislative Study Commission on Welfare Reform. The Commission shall consist of 12 members as follows:

- (1) Six members of the House of Representatives persons appointed by the Speaker of the House of Representatives; and Representatives, at least three of whom shall be members of the House; and
- (2) Six Senators persons appointed by the President Pro Tempore of the Senate. Senate, at least three of whom shall be members of the Senate.

(b) The Speaker of the House of Representatives shall designate one representative as cochair and the President Pro Tempore of the Senate shall designate one Senator as cochair.

(c) The Commission may study the following: ~~shall study the whole issue of the need for welfare reform in light of the current social crisis caused, in part, by the rapidly increasing incidence of violent crimes. This study shall include:~~

- ~~(1) A reexamination of the whole purpose of the welfare system and an identification of those disincentives to raising responsible, independent participants in society that are built into the system;~~
- ~~(2) An analysis of the federal welfare reform proposals and of other states' initiatives; and~~
- ~~(3) A compilation and detailed examination, including detailed fiscal analysis, of proposals to reform the welfare system.~~
- (1) The feasibility of having public assistance appropriations and expenditures based on program/performance goals that foster consolidation and collaboration across program and agency lines;
- (2) Consideration of what consequences will ensue if a program or agency fails to attain its benchmarks or goals, and how those consequences can be handled in a manner that does not penalize families;
- (3) The feasibility of allowing counties to administer their own public assistance programs rather than the program devised by the State, and what core services, if any, should be part of all programs;
- (4) The feasibility of using public assistance funds to purchase services through subcontracting grants or otherwise from private and public not-for-profit organizations best able to achieve designated program and performance benchmarks and goals.

In considering these issues, special attention shall be given to:

- a. The capacity of not-for-profit organizations in various local areas of the State to provide needed services and meet designated benchmarks and goals;
- b. The best way to assure fiscal and program accountability;
- c. Identification of a reasonable per-unit cost for administering and delivering specified services in a manner that:
 - 1. Considers and reflects an understanding of the populations to be served, and ensures that persons most difficult to serve will actually be served; and
 - 2. Considers the availability of infrastructure in local areas such as transportation, day and evening child care, job-training activities, and job-placement opportunities;
- d. The extent to which it is feasible for recipient eligibility standards to be localized or regionalized; and
- e. Linking all public assistance, job-training and job-placement program funding to performance, whether the services are being provided by governmental or nongovernmental agencies."

(d) Repealed by Section 23.8B(a) of Chapter 507 of the 1995 Session Laws.

(e) Repealed by Section 23.8B(a) of Chapter 507 of the 1995 Session Laws.

(f) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

(g) Members of the Commission shall receive subsistence and travel expenses at the rates set forth in ~~G.S. 120-3.1.~~ G.S. 120-3.1, 138-5, or 138-6, as appropriate.

(h) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission or committee, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(i) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

(j) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

(k) The Legislative Study Commission on Welfare Reform shall submit a final report to the General Assembly on or before the first day of the 1997 General Assembly. Upon filing its final report, the Commission shall terminate, unless reauthorized by the General Assembly."

(b) Subsection (b) of Section 23.8B of Chapter 507 of the 1995 Session Laws is repealed.

(c) From funds appropriated to the General Assembly, the Legislative Services Commission may allocate funds for the expenses of the Legislative Study Commission on Welfare Reform under this Part.

PART XVIII.-----AGING COMMISSION STUDY (Pulley)

Sec. 18.1. (a) The Aging Study Commission shall study the issue of adult care home grading of those homes licensed under Chapter 131D of the General Statutes and shall report the results of this study, together with any legislative recommendations, in its report to the 1997 General Assembly.

(b) This study shall include consideration of the following:

- (1) Determination of the appropriate level or levels of government and agency of the county departments of social services to perform the grading of adult care homes, determination of the appropriate form of the grading, and determination of the appropriate method used to report the grading results;
- (2) The appropriateness of grading from "A" to "C";
- (3) The conditions in each home to be graded, including:
 - a. Housekeeping, furnishings, buildings, and equipment;
 - b. Personnel;
 - c. Services;
 - d. Medical care;
 - e. Food service;
 - f. Program; and
 - g. Other conditions and situations the county departments, in cooperation with the Division of Facility Services, consider important in evaluating the homes for grading, including the attitude of the residents and their families towards the home and the home's programs and services;
- (4) The appropriateness of having State Ombudsman and the Division of Aging train their workers in how to perform the grading evaluations and establish training requirements that must be met by any worker before that worker grades any home; and
- (5) Any other items the Commission considers necessary to its study.

PART XIX.-----EFFECTIVE DATE AND APPLICABILITY

Sec. 19.1. Except as otherwise specifically provided, this act is effective July 1, 1996. If a study is authorized both in this act and the Current Operations Appropriations Act of 1996, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1996 as ratified.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

**CAPITAL IMPROVEMENTS APPROPRIATIONS ACT OF 1995, AND
TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF
THE STATE.**

The General Assembly of North Carolina enacts:

PART 1. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

Sec. 1.1. This act shall be known as the Current Operations Appropriations Act of 1996.

PART 2. GENERAL FUND APPROPRIATIONS

CURRENT OPERATIONS/GENERAL FUND

Sec. 2. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the biennium ending June 30, 1997, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1996-97 fiscal year.

<u>Current Operations - General Fund</u>	<u>1996-97</u>
General Assembly	\$ (225,000)
Judicial Department	7,895,957
Office of the Governor	
01. Office of the Governor	(31,388)
02. Office of State Budget and Management	(37,689)
03. Office of State Planning	(5,000)
04. Housing Finance Agency	3,500,000
Department of Secretary of State	437,048
Department of State Treasurer	2,200,000
Department of Public Education	98,021,116

Department of Justice	1,260,151
Department of Administration	(270,049)
Department of Agriculture	972,020
Department of Labor	419,183
Department of Insurance	1,895,364
Department of Environment, Health, and Natural Resources	21,490,126
Office of Administrative Hearings	262,754
Department of Human Resources	
01. Office of the Secretary	795,466
02. Division of Aging	5,150,231
03. Division of Child Development	8,804,765
04. Division of Services for the Deaf and Hard of Hearing	(148,984)
05. Division of Social Services	(5,462,841)
06. Division of Medical Assistance	(13,609,703)
07. Division of Services for the Blind	(36,419)
08. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	(5,596,205)
09. Division of Facility Services	431,977
10. Division of Vocational Rehabilitation Services	978,310
11. Division of Youth Services	184,566
Total Department of Human Resources	(8,508,837)
Department of Correction	(37,214,282)
Department of Commerce	
01. Commerce	11,353,334
02. MCNC	(14,000,000)
03. Rural Economic Development Center	2,700,000
04. Biotechnology Center	1,000,000
Department of Revenue	1,793,876
Department of State Auditor	175,000
Department of Cultural Resources	3,466,303

Department of Crime Control and Public Safety	738,944
Office of the State Controller	8,935,985
University of North Carolina - Board of Governors	
01. General Administration	13,000,000
02. University Institutional Programs	29,904,337
03. Related Educational Programs	3,880,160
04. University of North Carolina at Chapel Hill	
a. Academic Affairs	(422,425)
b. Health Affairs	(29,424)
05. North Carolina State University at Raleigh	
a. Academic Affairs	(246,316)
06. University of North Carolina at Greensboro	(114,556)
07. University of North Carolina at Charlotte	(5,000)
08. University of North Carolina at Asheville	(4,500)
09. North Carolina Agricultural and Technical State University	(438,523)
10. Western Carolina University	(91,286)
11. Appalachian State University	(203,487)
12. University of North Carolina at Pembroke	(3,190)
13. Winston-Salem State University	(500)
14. Elizabeth City State University	(125,503)
15. Fayetteville State University	(9,000)
16. North Carolina Central University	(67,779)
17. North Carolina School of the Arts	(317,543)
18. North Carolina School of Science and Mathematics	(28,036)
19. UNC Hospitals at Chapel Hill	(20,000,000)
Total University of North Carolina - Board of Governors	24,677,429
Department of Community Colleges	20,795,894
State Board of Elections	175,000
Debt Service	(9,000,000)

Salary Adjustment Fund	1,500,000
Reserve for Compensation Increase	267,546,807
Reserve for Military Affairs	200,000
Reduction in Postage	(300,000)
Retirement Rate Adjustment	(325,600)
Criminal Justice Information System	400,000
Reserve for Structured Sentencing	1,433,800
GRAND TOTAL CURRENT OPERATIONS -- GENERAL FUND	\$415,328,246

PART 3. CURRENT OPERATIONS/HIGHWAY FUND

Sec. 3. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the biennium ending June 30, 1997, according to the following schedule:

<u>Current Operations/Highway Fund</u>	<u>1996-97</u>
Department of Transportation	
01. Administration	\$ 960,000
02. Construction and Maintenance	2,206,000
03. Division of Motor Vehicles	1,894,190
04. Reserve for Salary Increases	<u>14,008,494</u>

GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUNDS
19,068,684

CURRENT OPERATIONS/HIGHWAY FUND - NONRECURRING APPROPRIATIONS

Sec. 3.1. Appropriations are made from the Highway Fund of the 1996-97 fiscal year for use by the Department of Transportation, and for other purposes to provide for one-time expenditures according to the following schedule:

<u>Current Operations/Highway Fund - Nonrecurring</u>	<u>1996-97</u>
Department of Transportation	
01. Administration	\$ 2,781,145
02. Construction and maintenance	
(a) State Maintenance	
(01) Contract Resurfacing	6,748,423

03. Division of Motor Vehicles	1,296,716
04. Reserve for Capital Projects	1,958,126
05. Reserve for Rail Travel Enhancement	1,700,000

Department of Crime Control and Public Safety 3,288,000

Reserve for Salary Increases 851,906

GRAND TOTAL CURRENT OPERATIONS/HIGHWAY FUND -
NONRECURRING \$18,624,316

PART 4. HIGHWAY TRUST FUND

Sec. 4. In addition to the appropriations made by Section 4 of Chapter 324 of the 1995 Session Laws, appropriations from the Highway Trust Fund are made for the 1996-97 fiscal year as follows:

01. Intrastate System	\$ 8,569,105
02. Secondary Roads Construction	612,813
03. Urban Loops	3,464,990
04. State Aid - Municipalities	899,099
05. Program Administration	271,993
06. Transfer to General Fund	<u>-</u>

GRAND TOTAL/HIGHWAY TRUST FUND \$ 13,818,000

PART 5. GENERAL FUND AVAILABILITY STATEMENTS

Requested by: Senators Plyler, Perdue, Odom

BUDGET REFORM STATEMENTS

Sec. 5. The General Fund and availability used in developing the 1996-97 budget is as shown below:

(1) Composition of the 1996-97 beginning availability:

	(\$ Million)
a. Revenue collections in 1995-96 authorized but not appropriated by the 1995 General Assembly	\$183.8
b. Revenue collections in 1995-96 in excess of authorized estimates	320.6
c. Estimated unexpended appropriations for 1995-96 (reversions)	220.0
1995-96 Ending Credit Balance	\$724.4
d. Plus: Reserved 1994-95 Disproportionate Share Funds	1.6
e. Less: Transfer to Savings Reserve Account	77.4
f. Less: Transfer to Reserve for Repair	

	and Renovations		130.0
	g. Less: Transfer to Clean Water Management Trust Fund		47.1
	h. Transfer to Capital Improvement Reserve		39.5
	i. Transfer to Federal Retiree Refund Account		26.2
(2)	Beginning Unrestricted Fund Balance, July 1, 1996		\$405.8
(3)	Authorizations by the 1995 General Assembly for 1996-97:		
	a. Revenue collections left unaddressed	242.1	
	b. 1996-97 capital authorizations	<u>-47.8</u>	194.3
(4)	Projected revenue collections above 1995 Session estimates under existing tax structure		109.4
(5)	Disproportionate Share Revenue Estimates lowered		-15.7
(6)	Non-tax Revenue		
	a. Increase Court Fees	4.2	
	b. Local Sales Tax--Local Government Commission	<u>1.2</u>	5.4
(7)	Reserve for Tax Reductions and Federal Retiree Refunds/Credits		<u>-85.2</u>
	TOTAL AVAILABILITY		\$614.0

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
DISPOSITION OF DISPROPORTIONATE SHARE RECEIPTS
CLARIFICATION

Sec. 5.2. Section 6.8 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 6.8. For the 1995-97 fiscal biennium, as it receives funds associated with Disproportionate Share Payments from the State ~~psychiatric~~ hospitals, the Division of Medical Assistance shall deposit funds appropriated for the Medicaid program in a sum equal to the federal share of the Disproportionate Share Payments as nontax revenue. Any of these funds that are not appropriated by the General Assembly shall be reserved by the State Controller for future appropriation."

Requested by: Representatives Holmes, Creech, Esposito, Senators Perdue, Plyler, Odom
EXPENDITURE OF FUNDS FROM RESERVE FOR REPAIRS AND RENOVATIONS

Sec. 5.3. (a) Of the funds in the Reserve for Repairs and Renovations for the 1996-97 fiscal year, forty-six percent (46%), shall be allocated to the Board of Governors of The University of North Carolina for repairs and renovations pursuant to G.S.143-15.3A, in accordance with guidelines developed in The University of North Carolina Funding Allocation Model for Reserve for Repairs and Renovations, as approved by the Board of Governors of The University of North Carolina; and fifty-four percent (54%) shall be allocated to the Office of State Budget and Management for repairs and renovations pursuant to G.S. 143-15.3A.

Notwithstanding G.S. 143-15.3A, the Board of Governors may allocate funds for the repair and renovation of facilities not supported from the General Fund if the Board determines that sufficient funds are not available from other sources and that conditions warrant General Fund assistance. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed location of funds.

The Board of Governors and the Office of State Budget and Management shall submit to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office, for their review, the proposed allocation of these funds. Subsequent changes in the proposed allocations shall be reported prior to expenditure to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.

(b) Funds earmarked in the 1995-96 fiscal year for the Repairs and Renovations Reserve but not appropriated are hereby appropriated. The Office of State Budget and Management may allocate these funds for land acquisition, matching federal funds, State grants, and grants-in-aid.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

USE OF FUNDS FROM REPAIRS AND RENOVATIONS RESERVE ACCOUNT/REPORT TO GOVERNMENTAL OPERATIONS

Sec. 5.4. Notwithstanding G.S. 143-16.3, funds from the Repairs and Renovations Reserve Account may be used for purposes consistent with G.S. 143-15.3A and reported to the Joint Legislative Commission on Governmental Operations.

PART 6. BLOCK GRANT APPROPRIATIONS

Requested by: Representatives Holmes, Creech, Esposito, Gardner, Nye, Russell, Senators Plyler, Perdue, Odom, Martin of Guilford, Lucas

DHR BLOCK GRANT PROVISIONS

Sec. 6. (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1997, according to the following schedule:

COMMUNITY SERVICES BLOCK GRANT

01. Community Action Agencies	\$ 9,198,794
02. Limited Purpose Agencies	511,044
03. Department of Human Resources to administer and monitor the activities of the Community Services Block Grant	511,044
TOTAL COMMUNITY SERVICES BLOCK GRANT	\$ 10,220,882
SOCIAL SERVICES BLOCK GRANT	
01. County Departments of Social Services	\$ 30,395,663
02. Allocation for In-Home Services provided by County Departments of Social Services	2,101,113
03. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	4,764,124
04. Division of Services for the Blind	3,205,711
05. Division of Youth Services	950,674
06. Division of Facility Services	343,341
07. Division of Aging - Home and Community Care Block Grant	1,915,234
08. Day Care Services	15,694,900
09. Division of Vocational Rehabilitation - United Cerebral Palsy	71,484
10. State Administration	1,954,237
11. Child Medical Evaluation Program	238,321
12. Adult Day Care Services	599,551
13. County Departments of Social Services for Child Abuse/Prevention and Permanency Planning	394,841
14. Transfer to Preventive Health Block Grant for Emergency Medical Services	213,128

15. Allocation to Preventive Health Block Grant for AIDS Education, Counseling and Testing	66,939
16. Transfer to Department of Administration for the N.C. Commission of Indian Affairs In Home Services Program for the elderly	203,198
17. Division of Vocational Rehabilitation-Easter Seals Society	116,779
18. UNC-CH CARES Program for training and consultation services	247,920
19. Transfer to Department of Environment, Health and Natural Resources for the Adolescent Pregnancy Prevention Program	239,261
20. Office of the Secretary - Office of Economic Opportunity for N.C. Senior Citizens' Federation for outreach services to low-income elderly persons	41,302
TOTAL SOCIAL SERVICES BLOCK GRANT	\$ 63,757,721

LOW INCOME ENERGY BLOCK GRANT

01. Energy Assistance Programs	\$ 5,216,233
02. Crisis Intervention	5,709,258
03. Administration	1,275,611
04. Weatherization Program	4,078,042
05. Indian Affairs	33,022
TOTAL LOW INCOME ENERGY BLOCK GRANT	\$ 16,312,166

MENTAL HEALTH SERVICES BLOCK GRANT

01. Provision of Community-Based Services in accordance with the Mental Health Study Commission's Adult Severe and Persistently Mentally Ill Plan	\$ 3,794,179
02. Provision of Community-Based Services in accordance with the	

Mental Health Study Commission's Child Mental Health Plan	1,802,819
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03. Administration	572,897
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TOTAL MENTAL HEALTH SERVICES BLOCK GRANT	\$ 6,169,895
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BLOCK GRANT FOR THE PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

01. Provision of Community-Based Alcohol and Drug Abuse Services, Tuberculosis Services, and Services provided by the Alcohol, Drug Abuse Treatment Centers	\$ 10,935,939
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02. Continuation of Services for Pregnant Women and Women with Dependent Children	5,060,076
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03. Continuation and Expansion of Services to IV Drug Abusers and others at risk for HIV diseases	4,836,407
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04. Provision of services in accordance with the Mental Health Study Commission's Child and Adolescent Alcohol and other Drug Abuse Plan	5,964,093
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05. Administration	1,841,742
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TOTAL BLOCK GRANT FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE	\$ 28,638,257
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CHILD CARE AND DEVELOPMENT BLOCK GRANT

01. Child Day Care Services	\$ 17,826,641
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02. Administrative Expenses and Quality and Availability Initiatives	1,980,738
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03. Before and After School Child Care Programs and Early Childhood Development Programs	4,951,845
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04. Quality Improvement Activities	1,650,614
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TOTAL CHILD CARE AND DEVELOPMENT BLOCK GRANT	\$ 26,409,838
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(b) Decreases in Federal Fund Availability

If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of the federal block grants listed above, shall be reduced equally to total the reduction in federal funds.

(c) Increases in Federal Fund Availability

Any block grant funds appropriated by the United States Congress in addition to the funds specified in this act shall be expended by the Department of Human Resources, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly. All these budgeted increases shall be reported to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.

This subsection shall not apply to Job Training Partnership Act funds.

(d) If funds appropriated through the Child Care and Development Block Grant for any program cannot be obligated or spent in that program within the obligation or liquidation periods allowed by the federal grants, the Department may move funds to other programs, in accordance with the federal requirements of the grant, in order to use the federal funds fully.

(e) The Division of Vocational Rehabilitation shall evaluate the services currently provided by the United Cerebral Palsy contract and shall report any recommended changes in this funding allocation for the 1997-1998 Social Services Block Grant to the 1997 General Assembly and to the Fiscal Research Division.

(f) Of the funds appropriated in the Low Income Energy Block Grant for the Weatherization Program, one million six hundred thirty-one thousand two hundred eighteen dollars (\$1,631,218) are contingent upon approval of a federal waiver. In the event this waiver is not approved these funds shall be transferred to the Crisis Intervention Program.

(g) The Department shall explore and report by April of 1997, on the use of private nonprofit organizations for the administration of Low Income Energy Block Grant funds for Crisis Intervention.

NER BLOCK GRANT FUNDS

Sec. 6.1 (a) Appropriations from federal block grant funds are made for the fiscal year ending June 30, 1997, according to the following schedule:

COMMUNITY DEVELOPMENT BLOCK GRANT

01. State Administration	\$ 1,000,000
02. Urgent Needs and Contingency	2,177,500
03. Community Empowerment	2,613,000
04. Economic Development	8,710,000

05. Community Revitalization	29,178,500
06. State Technical Assistance	450,000
07. Housing Development	871,000

TOTAL COMMUNITY DEVELOPMENT
BLOCK GRANT - 1997 Program Year \$ 45,000,000

TOTAL JOB TRAINING PARTNERSHIP ACT \$ 35,796,741

MATERNAL AND CHILD HEALTH BLOCK GRANT

01. Healthy Mother/Healthy Children Block Grants to Local Health Departments	\$ 9,838,074
02. High Risk Maternity Clinic Services, Perinatal Education and Training, SIDS, and Consultation/Technical Assistance	1,810,112
03. Services to Children With Special Health Care Needs	5,065,331

TOTAL MATERNAL AND CHILD
HEALTH BLOCK GRANT \$ 16,713,517

PREVENTIVE HEALTH SERVICES BLOCK GRANT

01. Emergency Medical Services	\$ 213,128
02. Hypertension Programs	711,813
03. Statewide Health Promotion Programs	2,568,940
04. Dental Health for Fluoridation of Water Supplies	210,269
05. Rape Prevention and Rape Crisis Programs	187,110
06. Rape Prevention and Rape Education	1,335,126
07. AIDS/HIV Education, Counseling, and Testing	66,939
08. Office of Minority Health and Minority Health Council	174,915

**TOTAL PREVENTIVE HEALTH SERVICES BLOCK GRANTS\$
5,667,288****(b) Decreases in Federal Fund Availability**

For JTPA and Community Development Block Grants: If federal funds are reduced below the amounts specified above after the effective date of this act, then every program in each of these federal block grants shall be reduced by the same percentage as the reduction in federal funds.

For the Maternal and Child Health Services and Preventive Health Services federal block grants: If federal funds are reduced less than ten percent (10%) below the amounts specified above after the effective date of this act, then every program in the Maternal and Child Health Services and in the Preventive Health Services block grants shall be reduced by the same percentage as the reduction in federal funds. If federal funds are reduced by ten percent (10%) or more below the amounts specified above after the effective date of this act, then for the Maternal and Child Health Services and the Preventive Health Services block grants the Department of Environment, Health, and Natural Resources shall allocate the decrease in funds after considering the effectiveness of the current level of services.

(c) Increases in Federal Fund Availability

Any block grant funds appropriated by the Congress of the United States in addition to the funds specified in this act shall be expended as follows:

- (1) For the Community Development Block Grant -- Each program category under the Community Development Block Grant shall be increased by the same percentage as the increase in federal funds.
- (2) For the Maternal and Child Health Services Block Grant -- Thirty percent (30%) of these additional funds shall be allocated to services for children with special health care needs and seventy percent (70%) shall be allocated to local health departments to assist in the reduction of infant mortality.
- (3) For the Preventive Health Block Grants -- If federal funds are increased by ten percent (10%) or more, then the Department shall allocate the increase in funds after considering the effectiveness of the current level of services and the effectiveness of services to be funded by the increase. If federal funds are increased by less than ten percent (10%), then these additional funds may be budgeted by the appropriate department, with the approval of the Office of State Budget and Management, provided the resultant increases are in accordance with federal block grant requirements and are within the scope of the block grant plan approved by the General Assembly.

(d) Changes to budgeted allocations to the Maternal and Child Health Services and the Preventive Health Services block grants due to increases or decreases in federal funds shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division within 30 days of the allocation. All other increases shall be reported to the

Joint Legislative Commission on Governmental Operations and to the Director of the Fiscal Research Division.

(e) Education Setaside of JTPA Funds

The Department of Commerce shall certify to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office when Job Training Partnership Act funds have been distributed to each agency, the total amount distributed to each agency, and the total amount of eight percent (8%) Education Setaside funds received.

(f) Limitations on Community Development Block Grant Funds

Of the funds appropriated in this section for the Community Development Block Grant, the following shall be allocated in each category for each program year: up to one million dollars (\$1,000,000) may be used for State administration; up to two million one hundred seventy-seven thousand five hundred dollars (\$2,177,500) may be used for Urgent Needs and Contingency; up to two million six hundred thirteen thousand dollars (\$2,613,000) may be used for Community Empowerment; up to eight million seven hundred ten thousand dollars (\$8,710,000) may be used for Economic Development; not less than twenty-nine million one hundred seventy-eight thousand five hundred dollars (\$29,178,500) shall be used for Community Revitalization; up to four hundred fifty thousand dollars (\$450,000) may be used for State Technical Assistance; up to eight hundred seventy-one thousand dollars (\$871,000) may be used for Housing Development. If federal block grant funds are reduced or increased by the Congress of the United States after the effective date of this act, then these reductions or increases shall be allocated in accordance with subsection (b) or (c) of this section, as applicable.

PART 7. GENERAL PROVISIONS

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

REPAIRS RESERVE ACCOUNT CHANGES

Sec. 7.1. (a) G.S. 143-15.2 reads as rewritten:

"§ 143-15.2. *Use of General Fund credit balance.*

The State Controller shall reserve up to one-fourth of any unreserved credit balance, as determined on a cash basis, remaining in the General Fund at the end of each fiscal year to the Savings Reserve Account as provided in G.S. 143-15.3, unless that would result in the Savings Reserve Account having funds in excess of five percent (5%) of the amount appropriated the preceding year for the General Fund operating budget, including local government tax-sharing funds; funds if directly appropriated; in that case, only funds sufficient to reach the five percent (5%) level shall be reserved. The State Controller shall also reserve ~~the greater of (i) one-fourth of any from the unreserved credit balance, as determined on a cash basis, remaining in the General Fund and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year to the Repairs and Renovations Reserve Account as provided in G.S. 143-15.3A.~~ The General Assembly may

appropriate that part of the anticipated General Fund credit balance not expected to be reserved to the Savings Reserve Account or the Repairs and Renovations Reserve Account only for capital improvements or other one-time expenditures. As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to G.S. 143-15.3 and G.S. 143-15.3A."

(b) G.S. 143-15.3A(a) reads as rewritten:

"(a) There is established a Repairs and Renovations Reserve Account as a restricted reserve in the General Fund. The State Controller shall reserve to the Repairs and Renovations Reserve Account ~~the greater of (i) one-fourth of any unreserved credit balance as determined on a cash basis, remaining in the General Fund and (ii) three percent (3%) of the replacement value of all State buildings supported from the General Fund, at the end of each fiscal year.~~ As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the Controller to the Savings Reserve Account or the Repairs and Renovations Reserve Account pursuant to this section and G.S. 143-15.3."

(c) This section is effective June 30, 1996.

Requested by: Senator Odom

WESTERN CAROLINA CENTER FUNDS

Sec. 7.2. Of the funds allocated in Section 5.3 of this act to the Office of State Budget and Management from the Repairs and Renovations Fund, up to three hundred thirty-nine thousand three hundred fifty-seven dollars (\$339,357) may be used for Phase II Retrofit to install a freestanding boiler at the Western Carolina Center.

Requested by: Senators Plyler, Perdue, Odom

FUNDS FOR ASBESTOS REMOVAL/FIRE SAFETY

Sec. 7.3. Of the funds allocated in Section 5.3 of this act to the Board of Governors of The University of North Carolina from the Repairs and Renovations Reserve Fund, at least four million dollars (\$4,000,000) shall be used for projects related to asbestos removal or fire safety.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

CHANGES IN THE EXECUTION OF THE BUDGET

Sec. 7.4. (a) G.S. 120-76 is amended by adding a new subdivision to read:

"(8) The Joint Legislative Commission on Governmental Operations shall be consulted by the Governor before the Governor does any of the following:

a. Makes allocations from the Contingency and Emergency Fund.

- b. Authorizes expenditures in excess of the total requirements of a program as enacted by the General Assembly, except for trust funds as defined in G.S. 116-36.1(g).
- c. Proceeds to reduce programs subsequent to a reduction of ten percent (10%) or more in the federal fund level certified to a department and any subsequent changes in distribution formulas.
- d. Takes extraordinary measures under Article III, Section 5(3) of the Constitution to effect necessary economies in State expenditures required for balancing the budget due to a revenue shortfall, including, but not limited to, the following: loans among funds, personnel freezes or layoffs, capital project reversions, program eliminations, and use of reserves. However, if the Committee fails to meet within 10 calendar days of a request by the Governor for its consultation, the Governor may proceed to take the actions he feels are appropriate and necessary and shall then report those actions at the next meeting of the Commission.
- e. Approves a new capital improvement project funded from gifts, grants, receipts, special funds, self-liquidating indebtedness, and other funds or any combination of funds for the project not specifically authorized by the General Assembly. The budget for each capital project must include projected revenues in an amount not less than projected expenditures.

Notwithstanding the provisions of this subdivision or any other provision of law requiring prior consultation by the Governor with the Commission, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action under this subsection without consulting the Commission if the action is determined by the Governor to be related to the emergency. The Governor shall report to the Commission on any expenditures made under this paragraph no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency."

(b) G.S. 143-15.3A is amended by adding a new subsection to read:

"(c) The Governor shall consult with the Joint Legislative Commission on Governmental Operations before making allocations from the Repairs and Renovations Reserve Account.

Notwithstanding this subsection, whenever an expenditure is required because of an emergency that poses an imminent threat to public health or public safety, and is either the result of a natural event, such as a hurricane or a flood, or an accident, such as an explosion or a wreck, the Governor may take action under this subsection without consulting the Commission if the action is determined by the Governor to be related to the emergency.

The Governor shall report to the Commission on any expenditures made under this paragraph no later than 30 days after making the expenditure and shall identify in the report the emergency, the type of action taken, and how it was related to the emergency."

(c) G.S. 143-12 reads as rewritten:

" 143-12. *Bills containing proposed appropriations.*

(a) The Director shall cause to be prepared and submitted to the General Assembly the following bills:

(1) A bill containing all proposed current operations appropriations of the budget for each year in the ensuing biennium, which shall be known as the 'Current Operations Appropriations Bill', and a bill containing all proposed capital appropriations of the budget for each year in the ensuing biennium, which shall be known as the 'Capital Improvement Appropriations Bill'.

(2) If necessary, a bill containing the Director of the Budget's views on revenue for the ensuing biennium, which shall be known as the 'Budget Revenue Bill', and shall provide an amount of revenue for the ensuing biennium sufficient, in the opinion of the Director and the Commission, to meet the appropriations contained in the Current Operations Appropriations Bill and the Capital Improvement Appropriations Bill.

(3) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1034, s. 153.

(b) To the end that all expenses of the State may be brought and kept within the budget, the Current Operations Appropriations Bill shall contain a specific sum as a contingent or emergency appropriation, and shall allocate a specific portion of that sum to a special reserve to be used solely for purposes as outlined in G.S. 143-23(a1)(3), (4), and (5). The G.S. 143-23(a1)(2). Notwithstanding any other provision of law, the manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, and after consulting with the Joint Legislative Commission on Governmental Operations, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State, for their information.

Funds allocated from the contingent or emergency appropriation may be used only for the purpose for which they were allocated and may not be reallocated for another purpose by the Governor. If the funds are not spent or encumbered for the purpose for which they were allocated by the end of the fiscal biennium and if the Governor and the Council of State do not reallocate them for that same purpose, the funds shall revert to the fund

from which the contingent or emergency appropriation was made. Also, if the funds are not needed for the purpose for which they were allocated, the funds shall revert to the fund from which the contingent or emergency appropriation was made.

(c) The Director of the Budget may, in preparation of the Appropriations and Revenue Bills, seek the advice of the Advisory Budget Commission. If the Director and the Commission shall not agree as to the Appropriations and Revenue Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as they shall find proper to submit as representing their own views."

(d) G.S. 143-15.3A(b) reads as rewritten:

"(b) The funds in the Repairs and Renovations Reserve Account shall be used only for the repair and renovation of State facilities and related infrastructure that are supported from the General Fund. Funds from the Repairs and Renovations Reserve Account shall be used only for the following types of projects:

- (1) Roof repairs and replacements;
- (2) Structural repairs;
- (3) Repairs and renovations to meet federal and State standards;
- (4) Repairs to electrical, plumbing, and heating, ventilating, and air-conditioning systems;
- (5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as amended;
- (6) Improvements to meet fire safety needs;
- (7) Improvements to existing facilities for energy efficiency;
- (8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks;
- (9) Improvements and renovations to improve use of existing space;
- (10) Historical restoration;
- (11) Improvements to roads, walks, drives, utilities infrastructure; and
- (12) Drainage and landscape improvements.

Funds from the Repairs and Renovations Reserve Account shall not be used for new construction or the expansion of the footprint of an existing facility unless required in order to comply with federal or State codes or standards.

The Director of the Budget shall not use funds in the Repairs and Renovations Reserve Account unless the use has been approved by an act of the General Assembly. Assembly or, if the General Assembly is not in session, the Director of the Budget has first consulted with the Joint Legislative Commission on Governmental Operations under G.S. 143-15.3A(c)."

(e) G.S. 143-18.1(c) reads as rewritten:

"(c) Upon the request of the administration of any State agency or institution, the Director of the Budget may accept funds by gift or grant for the construction of a capital improvement project not specifically provided for or authorized by the General Assembly. These funds shall be placed in a special reserve account to be held by the State Treasurer until the end of the

biennium in which the account was established or until the capital improvement project is authorized by the Director of the Budget, whichever occurs first. These funds shall be invested and the interest thereon shall be added to the reserve. If the project is not authorized by the end of that biennium, the State Treasurer shall pay the funds accumulated in the special reserve account to the grantor or donor. Upon the establishment of a special reserve account under this section, the Director of the Budget shall notify the Speaker of the House and President of the Senate of the receipt of the funds and the existence of the reserve account. Upon the request of the administration of any State agency or institution, the Governor ~~may~~ may, under G.S. 120-76(8), authorize the construction of a capital improvement project not specifically authorized by the General Assembly if such project is to be fully funded by gifts, grants, receipts, special funds, self-liquidating indebtedness, other funds, or any combination of funds, but not including funds appropriated from the General Fund. All expenditures under this authorization shall be handled in full compliance with the provisions of the Executive Budget Act.

The agency shall support its request for such capital improvement project, or projects, with the following information: the estimated annual operating costs for (i) utilities; (ii) maintenance; (iii) repairs; (iv) additional personnel; (v) any and all other expenses to the State resulting from the addition of this facility to the plant of the institution. Prior to taking any action under this section to authorize a project, the Governor or the Director of the Budget may consult with the Advisory Budget Commission and the Capital Planning Commission."

(f) G.S. 143-23 reads as rewritten:

" 143-23. *All maintenance funds for itemized purposes; transfers between objects or line items.*

(a) All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the (i) purposes or programs and (ii) objects or line items enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, as amended by the General Assembly. The function of the Advisory Budget Commission under this subsection applies only if the Director of the Budget consults with the Commission in preparation of the budget.

(al) ~~No transfers may be made between objects or line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for an object or line item if the overexpenditure is:~~

- ~~(1) In a purpose or program for which funds were appropriated for that fiscal period and the total amount spent for the purpose or program is no more than was appropriated for the purpose or program for the fiscal period;~~
- ~~(2) Required to continue a purpose or program because of unforeseen events, so long as the scope of the purpose or program is not increased;~~

- (3) ~~Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;~~
- (4) ~~Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or~~
- (5) ~~Required to call out the National Guard.~~

~~The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor the reason if the amount expended for a purpose or program is more than the amount appropriated for it from all sources. If the overexpenditure was authorized under subdivision (2) of this subsection, the Director of the Budget shall identify in the report the unforeseen event that required the overexpenditure.~~

Notwithstanding the provisions of subsection (a) of this section, a department, institution, or other spending agency may, with approval of the Director of the Budget, spend more than was appropriated for:

- (1) An object or line item within a purpose or program so long as the total amount expended for the purpose or program is no more than was appropriated from all sources for the purpose or program for the fiscal period;
- (2) A purpose or program, without consultation with the Joint Legislative Commission on Governmental Operations, if the overexpenditure of the purpose or program is:
 - a. Required by a court, Industrial Commission, or administrative hearing officer's order;
 - b. Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or
 - c. Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on any overexpenditures under this subdivision; or

- (3) A purpose or program, after consultation with the Joint Legislative Commission on Governmental Operations in accordance with G.S. 120-76(8), and only if: (i) the overexpenditure is required to continue the purpose or programs due to complications or changes in circumstances that could not have been foreseen when the budget for the fiscal period was enacted and (ii) the scope of the purpose or program is not increased. Total overexpenditures of a purpose or program for a fiscal year under this subdivision shall be limited to the lesser of five hundred thousand dollars (\$500,000) or ten percent (10%) of the amount appropriated from all sources for the purpose or program, unless such overexpenditures are necessary to provide matching funds for federal entitlement programs.

(a2) Funds appropriated for salaries and wages are also subject to the limitation that they may only be used for:

- (1) Salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, moving expenses of employees, payment of accumulated

annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments;

- (2) Contracted personal services if (i) the contract is for temporary services or special project services, (ii) the term of the contract does not extend beyond the fiscal year, (iii) the contract does not impose obligations on the State after the end of the fiscal year; and (iv) the total of all overexpenditures for contracted personal services approved in a program for a fiscal year does not exceed the greater of five hundred thousand dollars (\$500,000) or ten percent (10%) of the lapsed salary funds in the program for the fiscal year; and
- (3) Uses for which overexpenditures are permitted by ~~subdivisions (3), (4), and (5)~~ subdivision (2) of subsection (a1) of this section but the Director of the Budget shall include such use and the reason for it in his ~~quarterly report to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division of the Legislative Services Office, and the State Auditor, quarterly report to the Joint Legislative Commission on Governmental Operations.~~

Lapsed salary funds that become available from vacant positions are also subject to the limitation that they may not be used for new permanent employee positions or to raise the salary of existing employees.

~~(a3) The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations and the State Auditor shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund.~~

~~(a4) The State Auditor shall review the report received from the Director of the Budget to ensure that the transfer complied with the intent and the provisions of this Article and shall report the Auditor's findings to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division.~~

(b) Repealed by Session Laws 1985, c. 290, s. 8.

(c) Transfers or changes as between objects or line items in the budget of the Senate may be made by the President Pro Tempore of the Senate.

(d) Transfers or changes as between objects or line items in the budget of the House of Representatives may be made by the Speaker of the House of Representatives.

(e) Transfers or changes as between objects or line items in the budget of the General Assembly other than of the Senate and House of Representatives may be made jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(f) As used in this section:

- (1) 'Object or line item' means a budgeted expenditure or receipt in the budget enacted by the General Assembly that is designated by (i) a thirteen-digit code in the 1000-object code series or (ii) an eleven-digit code in all other object code series, in accordance with the Budget Code Structure and the State Accounting System

Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller.

- (2) 'Purpose or program' means a group of objects or line items for support of a specific activity outlined in the budget adopted by the General Assembly that is designated by a nine-digit fund code in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller."
- (2) For the 1996-97 fiscal year only, the Director of the Budget may deviate from the provisions of G.S. 143-23(a1)(3) that limit total overexpenditures of a purpose or program under that subdivision for a fiscal year to the lesser of five hundred thousand dollars (\$500,000) or ten percent (10%) of the amount appropriated from all sources for the purpose or program, unless such overexpenditures are necessary to provide matching funds for federal entitlement programs, if:
 - a. The Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated when the budget for the 1996-97 fiscal year was enacted; and
 - b. The Director of the Budget consults with the Joint Legislative Commission on Governmental Operations prior to authorizing the overexpenditure.
- (g) G.S. 143-25 reads as rewritten:

" 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.

All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is

required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission."

(h)(1) Effective July 1, 1996, G.S. 143-27 reads as rewritten:

" 143-27. *Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.*

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget has consulted with the Joint Legislative Commission on Governmental Operations and unless the Director of the Budget finds that (i) the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund, Fund and (ii) the funds may be expended in accordance with G.S. 143-23. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund."

(2) Effective July 1, 1997, G.S. 143-27, as rewritten by subdivision

(1) of this subsection, reads as rewritten:

" 143-27. *Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.*

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said

institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund ~~Codes or Codes~~, Highway Fund Codes, or budgeted Special Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget has consulted with the Joint Legislative Commission on Governmental Operations and unless the Director of the Budget finds that (i) the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund and (ii) the funds may be expended in accordance with G.S. 143-23. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund ~~Codes or Codes~~, Highway Fund ~~Codes Codes~~, or budgeted Special Fund Codes, that did not result in a corresponding reduced allotment from appropriations from that Fund."

- (3) For the 1996-97 fiscal year, the the Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in budgeted Special Fund Codes in excess of the amounts certified in those Special Fund Codes.

(i) G.S. 116-30.2 reads as rewritten:

" 116-30.2. *Appropriations to special responsibility constituent institutions.*

All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of The University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made. Notwithstanding G.S. 143-23(a1), G.S. 143-23(a2), and ~~G.S. 143-23(a3)~~, G.S. 143-23(a3) and G.S. 120-76(8), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the Chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be

conducted in the same manner as are requests of other constituent institutions. The quarterly allotment procedure established pursuant to G.S. 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions."

(j) G.S. 143-16.3 reads as rewritten:

" 143-16.3. *No expenditures for purposes for which the General Assembly has considered but not enacted an appropriation.*

Notwithstanding any other provision of law, no funds from any source, except for gifts, grants, and funds allocated from the Contingency and Emergency Fund ~~by the Council of State, in accordance with G.S. 143-12(b),~~ may be expended for any purpose, position, or other expenditure for which the General Assembly has considered but not enacted an appropriation of funds for the current fiscal period. For the purpose of this section, the General Assembly has considered a purpose, position, or other expenditure when that purpose is included in a ~~bill~~ bill, amendment, or petition or and when any committee of the Senate or the House of Representatives deliberates on that purpose."

(k) G.S. 116-30.1 reads as rewritten:

"§ 116-30.1. **Special responsibility constituent institutions.**

The Board of Governors of The University of North Carolina, acting on recommendation made by the President of The University of North Carolina after consultation by him with the State Auditor, may designate one or more constituent institutions of The University as special responsibility constituent institutions. That designation shall be based on an express finding by the Board of Governors that each institution to be so designated has the management staff and internal financial controls that will enable it to administer competently and responsibly all additional management authority and discretion to be delegated to it. The Board of Governors, on recommendation of the President, shall adopt rules prescribing management staffing standards and internal financial controls and safeguards, including the lack of any significant exceptions or audit findings in the annual financial audit by the State Auditor's Office, that must be met by a constituent institution before it may be designated a special responsibility constituent institution and must be maintained in order for it to retain that designation. These rules shall not be designed to prohibit participation by a constituent institution because of its size. These rules shall establish procedures for the President and his staff to review the annual financial audit reports or any other special or performance audit reports issued by the State Auditors Office for each special responsibility constituent institution. The President shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where such audit exceptions are identified, the President shall notify the Chancellor of the particular special responsibility constituent institution that such exceptions must be resolved to the satisfaction of the State Auditor and the President of The University within a three-month period commencing with the date of

receipt of the published financial audit report. If the exceptions are not satisfactorily resolved within a three-month period, the President of The University shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the State Auditor and the President of The University of North Carolina. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.

The rules established under this section shall include review and consultation with the State Auditor, the Director of the Office of State Personnel, and the Director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under G.S. 116-30.2, 116-30.4, and 143-53.1. Such review and consultation must take place no less frequently than once each biennium."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

PERFORMANCE BUDGETING

Sec. 7.6. Notwithstanding the provisions of G.S. 143-16.3, Section 10(b) of Chapter 324 of the 1995 Session Laws, and Section 6.5 of Chapter 507 of the 1995 Session Laws, the Director of the Budget may expend funds to continue to develop performance/program budget analysis for the 10 program areas of North Carolina State government that were identified by the Governmental Performance Audit Commission. The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations by December 1, 1996, regarding the development of performance/program budget analysis of State departments and institutions, its effectiveness, whether it should be continued, and any modifications that should be made.

The format of the presentation of the recommended 1997-99 State budget to the 1997 General Assembly shall follow that of presenting by department budget codes the line-item requirements for each fund along with a cross-reference to the appropriate program area and program outcome measure related to the budget fund.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

HISTORIC PROPERTIES ACQUISITIONS/REPORTING REQUIREMENT

Sec. 7.7. (a) G.S. 121-9 reads as rewritten:

" 121-9. *Historic properties.*

(a) Administration of Properties Acquired by State. -- Historic or archaeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Cultural Resources. Upon approval of the North Carolina Historical Commission and the Secretary of Cultural Resources, the Department of Cultural Resources may, in its discretion, make a contract with any county or municipality within the State or with any nonprofit corporation or organization for the administration of any portion of such property.

(b) Acquisition of Historic Properties. -- For the purpose of protecting or preserving any property of historical, architectural, archaeological, or other cultural importance to the people of North Carolina, and subject to the provisions of Subchapter II of Chapter 146 of the General Statutes, the Department may, with the approval of the North Carolina Historical Commission, Commission and after consultation with the Joint Legislative Commission on Governmental Operations, acquire, preserve, restore, hold, maintain, operate, and dispose of such properties, together with such adjacent lands as may be necessary for their protection, preservation, maintenance, and operation. Such property may be real or personal in nature, and in the case of real property, the acquisition may include the fee or any lesser interest therein. Property may be acquired by gift, grant, bequest, devise, lease, purchase, or condemnation pursuant to the provisions of Chapter 40A of the General Statutes, or otherwise. Property may be acquired by the Department, using such funds as may be appropriated for the purpose or moneys available to it from any other source.

(b1) In the case of real property, the North Carolina Historical Commission shall report the following information to the Joint Legislative Commission on Governmental Operations before acquiring the property:

- (1) The statewide historical significance of the site.
- (2) The potential uses of the site.
- (3) The capital requirements of the site over a 20-year period of time.
- (4) The annual operating costs of the site.
- (5) The expected levels of visitation at the site.
- (6) Any other information that would assist in determining the full cost of maintaining, operating, and administering the site as State property.

(c) Interests Which May Be Acquired. -- In the case of real property, the interest acquired shall be limited to that estate, interest, or term deemed by the Department to be reasonably necessary for the continued protection or preservation of the property. The Department may acquire the fee simple title, but where it finds that a lesser interest, including any development right, negative or affirmative easement in gross or appurtenant, covenant, lease, or other contractual right of or to any real property to be the most practical and economical method of protecting and preserving historic property, the lesser interest may be acquired.

(d) Conveyance of Property for Preservation Purposes. -- In appropriate cases, the Department may acquire or dispose of the fee or lesser interest to any such property for the specific purpose of conveying or leasing the property back to its original owner or of conveying or leasing it to such

other person, firm, association, corporation, or other organization under such covenants, deed restrictions, lease, or other contractual arrangements as will limit the future use of the property in such a way as to insure its preservation. Where such action is taken, the property may be conveyed or leased by private sale. In all cases where property is conveyed, it shall be subjected by covenant or otherwise to such rights of access, public visitation, and other conditions or restrictions of operation, maintenance, restoration, and repair as the Department may prescribe, or to such conditions as may be agreed upon between the Department and the grantee or lessee to accomplish the purposes of this section.

(e) Use of Property so Acquired. -- Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the Department for any public purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. The property shall not be subject to condemnation by the State of North Carolina or any of its agencies or political subdivisions at any time, unless such method of acquisition is first approved by the Governor and Council of State.

(f) Emergency Acquisition Where Funds Not Immediately Available. -- If funds or contributions for the acquisition of needed historic property are not available, the Governor and Council of State may, upon the recommendation of the Secretary of Cultural Resources and approval of the North Carolina Historical Commission, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on the property or properties, which option shall continue until 90 days after the adjournment sine die of the next General Assembly. Upon recommendation of the Secretary and approval of the Historical Commission, the Governor and Council of State may allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historically, archaeologically, architecturally, or culturally important properties. All funds hereinafter appropriated to purchase, restore, maintain, develop, or operate historic or archaeological or other important property shall be administered subject to the provisions of Article 1 of Chapter 143 of the General Statutes unless the statute making the appropriation shall in specific and express terms provide otherwise.

(g) Power to Acquire Property by Condemnation. -- In the event that a property which has been found by the Department of Cultural Resources to be important for public ownership or assistance is in danger of being sold, used, or neglected to such an extent that its historical or cultural importance will be destroyed or seriously impaired, or that the property is otherwise in danger of destruction or serious impairment, the Department of Cultural Resources, after receiving the approval of the North Carolina Historical Commission and of the Governor and Council of State, may acquire the historic property or any interest therein by condemnation under the provisions of Chapter 40A of the General Statutes. The Department of Cultural Resources, upon finding that destruction or serious impairment of the value of the property is imminent, shall file with the Governor and Council of State a report on the importance of the property and the desirability of ownership of the property, or the ownership of an interest

therein, by the State of North Carolina. Upon giving their approval, the Governor and Council of State shall cause to have filed such approval with the clerk of the superior court in the county or counties where the property is situated. Until the approval is filed, the power of condemnation may not be exercised. All condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina.

(h) Preservation and Custodial Care of State Capitol. -- The rotunda, corridors, and stairways of the first floor of the State Capitol and all portions of the second, third, and loft floors of the said building shall be placed in the custody of the Department of Cultural Resources; and the Department shall, subject to the availability of funds for the purpose, care for and administer these areas for the edification of present and future generations. The aforesaid areas shall be preserved as historic shrines and shall be maintained insofar as practicable as they shall appear following the restoration of the Capitol. The Department of Cultural Resources is authorized to deny the use of the legislative chambers for meetings in order that they, with their historic furnishings, may be better preserved for posterity; provided, however, that the General Assembly may hold therein such sessions as it may by resolution deem proper.

The Department of Cultural Resources is hereby entrusted with the responsibilities herein specified as being the agency with the experience best qualified to preserve and administer historic properties in a suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Cultural Resources and such labor supplied, as may be feasible, by the Department of Administration.

The offices and working areas of the first floor as well as all washrooms and the exterior of the Capitol shall remain under the jurisdiction of the Department of Administration: Provided, however, that the Department of Administration shall seek the advice of the Department of Cultural Resources in matters relating to any alteration, renovation, and furnishing of said offices and areas."

(b) G.S. 146-26 reads as rewritten:

" 146-26. *Donations and devises to State.*

No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the ~~said~~ land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. If the land is devised or donated to the State or to any State agency as an historic property, then title shall not vest until the Historical Commission reports to the Joint Legislative Commission on Governmental Operations as provided in G.S. 121-9. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of reporting to the Joint Legislative Commission on Governmental Operations if an historic property and acceptance by the Governor and Council of State."

Requested by: Representatives Ives, Lemmond, Senators Warren, Sherron
TOTAL QUALITY MANAGEMENT

Sec. 7.8. For the 1996-97 fiscal year only, the provisions of G.S. 143-16.3 do not apply to The Total Quality Management Program. This program shall be administered by the Office of State Budget and Management.

Requested by: Senators Perdue, Plyler, Odom, Representatives Holmes, Creech, Esposito

DISASTER RELIEF FUNDS

Sec. 7.9. The Director of the Budget may use lapsed salary funds for the 1995-97 fiscal biennium to match federal funds for disaster relief.

Requested by: Representatives Creech, Holmes, Esposito, Senators Sherron, Plyler, Odom, Perdue

CLARIFYING AND TECHNICAL CHANGES/ADMINISTRATIVE RULES

Sec. 7.10. (a) G.S. 150B-19 reads as rewritten:

" 150B-19. *Restrictions on what can be adopted as a rule.*

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
 - (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
 - (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
 - (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the 'reasonably necessary' standard of review set in G.S. 150B-21.9(a)(3).
 - (5) Establishes a ~~reasonable~~ fee or other ~~reasonable~~ charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:
 - a. A service to a State, federal, or local governmental unit.
 - b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
 - c. A transcript of a public hearing.
 - d. A conference, workshop, or course.
 - e. Data processing services.
 - (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement."
- (b) G.S. 150B-20(c) is repealed.
- (c) G.S. 150B-21.1(d) reads as rewritten:
- "(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:
- (1) The date specified in the rule.

- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule, ~~if the Commission objects to the permanent rule.~~ rule.
- (4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
- (5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission."

(d) G.S. 150B-21.1(e) reads as rewritten:

"(e) Publication. -- When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule ~~that does not differ substantially from if the permanent rule is substantially the same as the published temporary rule.~~ rule, unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule."

(e) G.S. 150B-21.2(e) reads as rewritten:

"(e) Hearing. -- An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and all the following apply:

- (1) The notice of ~~rule-making proceedings~~ text does not schedule a public hearing on the proposed rule.
- (2) The agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of ~~rule-making proceedings~~ text is published.
- (3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published."

(f) G.S. 150B-21.3 is amended by adding a new subsection to read:

"(f) Technical Change. -- A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a) or (b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

(g) G.S. 150B-2(2) reads as rewritten:

"(2) 'Contested case' means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another

person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. 'Contested case' does not include rulemaking, declaratory rulings, or the award or denial of a ~~scholarship or grant~~, scholarship, a grant, or a loan."

(h) G.S. 120-70.101(8) reads as rewritten:

"(8) To report to the General Assembly ~~at the beginning of each regular session~~ from time to time concerning the Committee's activities and any recommendations for statutory changes."

(i) G.S. 89C-3(6) reads as rewritten:

"(6) Practice of engineering. --

- a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this Chapter; or who holds himself out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

- b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank."

(j) G.S. 89E-3(4) reads as rewritten:

"(4) 'Geology' means the science dealing with the earth and its history; investigation, prediction and location of the materials and structures which compose it; the natural processes that cause change in the earth; and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials for the benefit of mankind. This definition shall not include any ~~service~~ of the following:

- a. Service or creative works, the adequate performance of which requires engineering education, training, and experience.
- b. The assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank."

(k) G.S. 89C-14(b) reads as rewritten:

"(b) ~~The registration fee shall be established by the Board in an~~ An applicant for registration who is required to take the written examination shall pay a fee equal to the cost of the examination to the Board plus an additional amount not to exceed one hundred dollars (\$100.00) which (\$100.00). The fee shall accompany the applications. application. The fee for comity registration of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board."

(l) Subsection (c) of this section becomes effective December 1, 1996, and applies to temporary rules published on or after December 1, 1995, except temporary rules published on or after December 1, 1995, for which the permanent rules adopted to replace the temporary rules have not been submitted to the Rules Review Commission within 270 days of publication of the temporary rules may remain effective under this section if the permanent rules are submitted to the Rules Review Commission by December 1, 1996. All other subsections of this section are effective upon ratification of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

CAPITAL RESERVE

Sec. 7.11. Of the funds appropriated in Chapters 324 and 507 of the 1995 Session Laws from the General Fund for the 1995-96 fiscal year for current operations, the sum of thirty-nine million five hundred nineteen thousand five hundred sixty-seven dollars (\$39,519,567) shall be transferred to a reserve for capital expenditures. Funds in the reserve shall be used for capital projects authorized as follows:

Capital Improvements - General Fund

1996-1997

Department of Administration

Prison Construction

1. Southern Piedmont Area Unit	\$ 9,000,000
2. Modular Housing Units	5,000,000
3. Prison Unit Improvements	1,600,000
4. Plan and Design Facilities	2,350,000

Department of Environment, Health,
and Natural Resources

- | | |
|-------------------------------|-----------|
| 1. Water Resources | 8,705,000 |
| 2. Museum of Natural Sciences | 500,000 |

University of North Carolina -
Board of Governors

- | | |
|---|-----------|
| 1. NCSU - Advanced planning for an Undergraduate General Chemistry and Physics Building | 2,000,000 |
| 2. NCA&T - Advanced planning for a General Classroom and Lab Bldg. | 1,000,000 |
| 3. UNC-G - Advanced planning for a Science Instructional Bldg. | 2,000,000 |
| 4. UNC-C - Advanced planning for Classroom Facilities | 1,000,000 |
| 5. Western Carolina - Advanced planning for a Fine Arts Center | 2,000,000 |
| 6. ECU - Advanced planning for the Science Laboratories and Technology Bldg. | 1,000,000 |

Department of Crime Control
and Public Safety

- | | |
|--|--------|
| 1. National Guard Armory - Mecklenburg | 87,567 |
|--|--------|

Department of Transportation

- | | |
|---|-----------|
| 1. Global Transpark Education and Training Center (State match) | 3,277,000 |
|---|-----------|

Requested by: Representatives Holmes, Esposito, Creech, Senators Plyler, Perdue, Odom

USE OF FUNDS IN RESERVES

Sec. 7.12. (a) Of the funds appropriated from the General Fund for the 1995-96 fiscal year, the Director of the Budget shall transfer the sum of five million seventy-six thousand four hundred sixty-six dollars (\$5,076,466) to the Reserve for Disaster Relief. These funds shall not be subject to the provisions of G.S. 143-16.3.

(b) Of the funds appropriated from the General Fund for the 1996-97 fiscal year, the Director of the Budget shall transfer the sum of five million one hundred thousand dollars (\$5,100,000) to the Reserve for Moving Expenses. These funds shall not be subject to the provisions of G.S. 143-16.3.

(c) Subsection (a) of this section becomes effective June 30, 1996.

PART 7A. OFFICE OF STATE TREASURER

Requested by: Representatives Creech, Holmes, Esposito, Ives, Lemmond, Senators Warren, Sherron

FORFEITED RESERVATION DEPOSITS DO NOT ESCHEAT

Sec. 7A. (a) Article 2 of Chapter 116B of the General Statutes is amended by adding a new section to read:

" 116B-23. Exclusion for forfeited reservation deposits.

Property or funds withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the services, regardless of any practice or policy of the business association related to the return of withheld funds, is not unclaimed or abandoned property."

(b) The Legislative Research Commission shall study the implementation and enforcement of Chapter 116B of the General Statutes, Escheats and Abandoned Property, including relevant policies and procedures of the Office of State Treasurer. The study shall include a review of: (i) the policy of the Office of State Treasurer regarding the requirement that funds withheld by persons and business associations, including nonprofit corporations, as penalties, forfeitures, or damages for unused reservations escheat, (ii) the effects the policy has on the economy of the State and on the business industry, and (iii) the effects G.S. 116B-23 will have on the citizens of the State as consumers. The Legislative Research Commission shall report its findings and recommendations to the 1997 General Assembly.

(c) Subsection (a) of this section applies to funds held or collected by business associations on or after July 1, 1996. Subsection (a) of this section expires June 30, 1997, but all funds collected or held by business associations before June 30, 1997, shall not escheat.

PART 8. GENERAL ASSEMBLY

Requested by: Representatives Holmes, Creech, Esposito, Senator Warren

LEGISLATIVE SERVICES OFFICER POSITION

Sec. 8. (a) G.S. 20-79.5(a) reads as rewritten:

"(a) Plates. -- The State government officials listed in this section are eligible for a special registration plate under G.S. 20-79.4. The plate shall bear the number designated in the following table for the position held by the official.

Position	Number on Plate
Governor	1
Lieutenant Governor	2
Speaker of the House of Representatives	3
President Pro Tempore of the Senate	4
Secretary of State	5
State Auditor	6
State Treasurer	7
Superintendent of Public Instruction	8
Attorney General	9
Commissioner of Agriculture	10

Commissioner of Labor	11
Commissioner of Insurance	12
Speaker Pro Tempore of the House	13
Legislative Administrative Officer	14
<u>Legislative Services Officer</u>	15
Secretary of Administration	15
Secretary of Environment, Health, and Natural Resources	16
Secretary of Revenue	17
Secretary of Human Resources	18
Secretary of Commerce	19
Secretary of Correction	20
Secretary of Cultural Resources	21
Secretary of Crime Control and Public Safety	22
Governor's Staff	23-29
State Budget Officer	30
State Personnel Director	31
Advisory Budget Commission Nonlegislative Member	32-41
Chair of the State Board of Education	42
President of the U.N.C. System	43
Alcoholic Beverage Control Commission	44-46
Assistant Commissioners of Agriculture	47-48
Deputy Secretary of State	49
Deputy State Treasurer	50
Assistant State Treasurer	51
Deputy Commissioner for the Department of Labor	52
Chief Deputy for the Department of Insurance	53
Assistant Commissioner of Insurance	54
Deputies and Assistant to the Attorney General	55-65
Board of Economic Development Nonlegislative Member	66-88
State Ports Authority Nonlegislative Member	89-96
Utilities Commission Member	97-104
<u>Post-Release Supervision and Parole Commission Member</u>	105-109
State Board Member, Commission Member, or State Employee Not Named in List	110-200".

(b) G.S. 120-3.1(a)(3) reads as rewritten:

"(3) A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as otherwise provided in this

subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

- a. Traveling as a representative of the General Assembly or of its committees or commissions, or
- b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars (\$26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the ~~Legislative Administrative Officer,~~ Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994)."

(c) G.S. 120-32.1 reads as rewritten:

" 120-32.1. *Use and maintenance of buildings and grounds.*

(a) The Legislative Services Commission shall:

- (1) Establish policy for the use of the State legislative buildings and grounds;
- (2) Maintain and care for the State legislative buildings and grounds, but the Commission may delegate the actual work of the maintenance of those buildings and grounds to the Department of Administration, which shall perform the work as delegated;
- (3) Provide security for the State legislative buildings and grounds;
- (4) Allocate space within the State legislative buildings and grounds; and
- (5) Have the exclusive authority to assign parking space in the State legislative buildings and grounds.

(b) The ~~Legislative Administrative Officer~~ Legislative Services Officer shall have posted the rules adopted by the Legislative Services Commission under the authority of this section in a conspicuous place in the State Legislative Building and the Legislative Office Building. The ~~Legislative Administrative Officer~~ Legislative Services Officer shall have filed a copy of the rules, certified by the chairman of the Legislative Services Commission, in the office of the Secretary of State and in the office of the Clerk of the Superior Court of Wake County. When so posted and filed, these rules shall constitute notice to all persons of the existence and text of the rules. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who knowingly violates any of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor. Any person, firm, corporation, partnership or association who combines, confederates, conspires, aids, abets, solicits, urges, instigates, counsels, advises, encourages or procures another or others to knowingly violate any

of the rules adopted, posted and filed under the authority of this section is guilty of a Class 1 misdemeanor.

(c) The Legislative Services Commission may cause to be removed at the owner's expense any vehicle parked in the State legislative buildings and grounds in violation of the rules of the Legislative Services Commission and may cause to be removed any vehicle parked in any State-owned parking space leased to an employee of the General Assembly where the vehicle is parked without the consent of the employee to whom the space is leased.

(d) For the purposes of this section, the term 'State legislative buildings and grounds' means:

(1) At all times:

- a. The State Legislative Building and the area between outer walls of the State Legislative Building and the near curblin of those sections of Jones, Wilmington, Lane, and Salisbury Streets which border land on which the State Legislative Building is situated;
- b. The Legislative Office Building and the areas between its outer walls and the near curblin of those sections of Lane and Salisbury Streets that border the land on which it is situated;
- c. Any State-owned parking lot which is leased to the General Assembly; and
- d. The bridge between the State Legislative Building and the State Governmental Mall.

(2) In addition, the surface area to the far curblin of those sections of Jones, Wilmington, Lane, and Salisbury Streets which border the land on which the State Legislative Building is situated:

- a. When the General Assembly is in regular or extra session; and
- b. On other days on which one or more standing committees of either or both houses of the General Assembly are meeting and the ~~Legislative Administrative Officer~~ Legislative Services Officer determines that additional parking is needed for the functioning of the General Assembly and files notice of the committee's or committees' meetings and his finding that additional parking is needed in the office of the Secretary of State and that of Clerk of the Superior Court of Wake County."

(d) G.S. 120-36.6 reads as rewritten:

" 120-36.6. *Legislative Fiscal Research staff participation.*

Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The ~~Legislative Administrative Officer~~ Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the Board of Awards and Council of State, unless the Board or Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Board, Commission or Council. The

Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Board, Commission, or Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the Board, Commission, or Council."

(e) G.S. 120-70.36 reads as rewritten:

" 120-70.36. *Staffing.*

The ~~Legislative Administrative Officer~~ Legislative Services Officer shall assign as staff to the Joint Select Committee professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Joint Select Committee through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Joint Select Committee."

(f) G.S. 120-70.46 reads as rewritten:

"§ 120-70.46. *Staffing.*

The ~~Legislative Administrative Officer~~ Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission."

(g) G.S. 120-70.52(c) reads as rewritten:

"(c) The Committee shall be funded by appropriations made to the Highway Trust Fund and allocated to the Intrastate System projects. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the ~~Legislative Administrative Officer,~~ Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

(h) G.S. 120-70.65 reads as rewritten:

" 120-70.65. *Staffing.*

The ~~Legislative Administrative Officer~~ Legislative Services Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission."

(i) G.S. 120-70.82(c) reads as rewritten:

"(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the ~~Legislative Administrative Officer~~, Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

(j) G.S. 120-70.92(c) reads as rewritten:

"(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Legislative Services Commission, through the ~~Legislative Administrative Officer~~, Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

(k) G.S. 120-70.95(c) reads as rewritten:

"(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the ~~Legislative Administrative Officer~~, Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

(l) G.S. 120-70.102(c) reads as rewritten:

"(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the ~~Legislative Administrative Officer~~, Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee."

(m) G.S. 143-8 reads as rewritten:

" 143-8. *Reporting of legislative and judicial expenditures and financial needs.*

On or before the first day of September, biennially, in the even-numbered years, the ~~Legislative Administrative Officer~~ Legislative Services Officer shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the budget classification adopted by the Director and approved and certified by the President ~~pro tempore~~ Pro Tempore of the Senate and the Speaker of the House of Representatives for

each year of the ensuing biennium, beginning with the first day of July thereafter. The Administrative Officer of the Courts shall furnish the Director a detailed statement of expenditures of the judiciary, and for each year of the current fiscal biennium an estimate of its financial needs as provided by law, itemized in accordance with the budget classification adopted by the Director and approved and certified by the Chief Justice for each year of the ensuing biennium, beginning with the first day of July thereafter. The Director shall include these estimates and accompanying explanations in the budget submitted with such recommendations as the Director may desire to make in reference thereto."

(n) G.S. 147-64.12(b) reads as rewritten:

"(b) The Auditor shall not conduct an audit on a program or activity for which he had management responsibility or in which he has been employed during the preceding two years. The General Assembly shall otherwise provide for the necessary audit of programs and activities within the meaning of this subsection.

If the Auditor's hotline receives a report of allegations of improper governmental activities in a program or activity that the Auditor is prohibited by this subsection from auditing, the Hotline Manager shall transmit the report to the ~~Legislative Administrative Officer~~ Legislative Services Officer or his designee. The report shall retain the same confidentiality after transmittal to the General Assembly that it had in the possession of the Auditor."

(o) All powers, duties, and responsibilities assigned to the Legislative Administrative Officer of the Legislative Services Commission, including the assignment of professional and clerical staff to assist in the work of studies and commissions, shall be transferred to the Legislative Services Officer of the Legislative Services Commission. All rules and policies of the Legislative Services Commission relating to the Legislative Administrative Officer shall apply to the Legislative Services Officer unless otherwise expressly amended or repealed.

Requested by: Representatives Holmes, Creech, Esposito, Senator Warren
EXTENSION OF TERRITORIAL JURISDICTION OF LEGISLATIVE SERVICES COMMISSION TO ALL OF LANE STREET

Sec. 8.1. G.S. 120-32.1(d) reads as rewritten:

"(d) For the purposes of this section, the term 'State legislative buildings and grounds' means:

(1) At all times:

a. ~~The State Legislative Building and the area~~ Building;

a1. The areas between the outer walls of the State Legislative Building and the near curblin of those sections of Jones, Wilmington, Lane, and Salisbury Streets which border land on which the State Legislative Building it is situated;

a2. The area between the outer walls of the State Legislative Building and the far curblin of that section of Lane Street which borders the land on which it is situated;

b. The Legislative Office Building and the areas between its outer walls and the near curblin of those sections of Lane

- and Salisbury Streets that border the land on which it is situated;
- c. Any State-owned parking lot which is leased to the General Assembly; and
 - d. The bridge between the State Legislative Building and the State Governmental Mall.
- (2) In addition, the surface area to the far curbline of those sections of Jones, Wilmington, ~~Lane~~, and Salisbury Streets which border the land on which the State Legislative Building is situated:
- a. When the General Assembly is in regular or extra session; and
 - b. On other days on which one or more standing committees of either or both houses of the General Assembly are meeting and the Legislative Administrative Officer determines that additional parking is needed for the functioning of the General Assembly and files notice of the committee's or committees' meetings and his finding that additional parking is needed in the office of the Secretary of State and that of Clerk of the Superior Court of Wake County."

Requested by: Representatives Holmes, Creech, Esposito, Senator Warren
ACCESS TO STATE INFORMATION BY LEGISLATIVE SERVICES OFFICE

Sec. 8.2. G.S. 120-32.01 reads as rewritten:

" 120-32.01. *Information to be supplied.*

(a) Every State department, State agency, or State institution shall furnish the Legislative ~~Administrative Services~~ Office and the Research, Fiscal Research, and Bill Drafting Divisions any information or records requested by them. Except when accessibility is prohibited by a federal statute, federal regulation or State statute, every State department, State agency, or State institution shall give the Legislative Services Office and the Fiscal Research Division access to any data base or stored information maintained by computer, telecommunications, or other electronic data processing equipment, whether stored on tape, disk, or otherwise, and regardless of the medium for storage or transmission.

(b) Notwithstanding subsection (a) of this section, access to the State Personnel Management Information System ~~by the Legislative Administrative Office and~~ by the Research and Bill Drafting Divisions shall only be through the Fiscal Research Division."

Requested by: Representatives Ives, Lemmond, Senators Warren, Sherron
AUTOMATED RULE MANAGEMENT SYSTEM FUNDS

Sec. 8.5. From the funds appropriated to the General Assembly for fiscal year 1996-97, up to three hundred thirty-five thousand dollars (\$335,000) shall be used for the development of an automated rule management system to provide electronic access by the General Assembly, the Office of Administrative Hearings, and the Rules Review Commission to all phases of the Administrative Procedure Act rule-making process. Of these funds, up to thirty-five thousand dollars (\$35,000) may be transferred

to the Office of Administrative Hearings for computer equipment to implement this automated process.

PART 9. OFFICE OF STATE BUDGET AND MANAGEMENT

Requested by: Representatives Holmes, Creech, Esposito, Senator Warren
RESERVE FOR MOVING EXPENSES/STATE AGENCIES

Sec. 9. Funds transferred in this act to the Reserve for Moving Expenses shall be used to pay for expenses involved in the relocation of State agencies. The Office of State Budget and Management shall solicit requests for allocations from this reserve from all agencies moving into the Old Education Building, the New Education Building, the Old Revenue Building, and any other new building for which construction will be completed during the 1996-97 fiscal year. The Office of State Budget and Management shall first allocate funds needed to pay moving expenses and other costs associated with moving, including telephone lines, data communication lines, and related equipment. No funds shall be expended to furnish new conference rooms, reception areas, open space, and to add centralized filing systems until all agencies scheduled to be moved have been relocated.

PART 10. DEPARTMENT OF ADMINISTRATION

Requested by: Representatives Ives, Lemmond, Senator Warren
DOA TO EVALUATE UTILIZATION OF "STATE-OWNED SPACE"

Sec. 10. The Department of Administration shall study and evaluate the utilization of space in the facilities owned by the State. In its study the Department shall consider the following: whether prime State office space is being used for storage purposes rather than offices; which uses of State space do not need to be located in the Capitol complex and could be located at other less expensive sites; and the merit, if any, of consolidating agency offices currently sited in various locations into either a single location or locations that are closer to each other in proximity. The Department shall also develop a priority list that indicates which uses it is most important to locate in State-owned space. Cost-effectiveness shall be a major criteria in establishing the priorities.

The Department of Administration shall develop a long-term plan to reduce the State's dependency on leased office space and shall report to the General Assembly no later than January 1, 1997, regarding the Department's findings, recommendations, and the proposed long-term plan. The report shall also include the priority list developed by the Department in accordance with this section.

Requested by: Representatives Ives, Lemmond, Senator Warren
DIRECTOR OF THE BUDGET AND STATE CONSTRUCTION MAY TIME SELECTION OF DESIGNERS AND RELEASE OF DESIGN AND CONSTRUCTION FUNDS TO AVOID INFLATION DUE TO MARKET PRICES BEING INCREASED BY THE NUMBER OF CONTRACTS

Sec. 10.1. G.S. 143-135.26(1) reads as rewritten:

- "(1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project and the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer and the final selection of the consultant except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the designer and the final selection of the consultant, and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible and accountable for the final selection of the designer and the final selection of the consultant. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided, however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning ~~only~~; only; provided, further, the Director of the Budget, after consultation with the State Construction Office, may waive the 60-day requirement for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects. The Director of the Budget also may, after consultation with the State Construction Office, schedule the availability of design and construction funds for capital improvement projects for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer."

Requested by: Representatives Ives, Lemmond, Senator Warren

MOTOR FLEET MANAGEMENT MODIFICATIONS

Sec. 10.2. G.S. 143-341(8)7a.vii is repealed.

Requested by: Representatives Ives, Lemmond, Senator Warren

PROCEEDS OF TIMBER SALES MAY BE USED FOR VETERANS HOMES

Sec. 10.3. Notwithstanding any other provision of law, the net proceeds derived from the sale of timber from land owned by or under the supervision and control of the Department of Administration, Division of Veterans Affairs, shall be deposited in the North Carolina Veterans Home Trust Fund and shall be used for the purposes set out in G.S. 165-48.

PART 11. DEPARTMENT OF CULTURAL RESOURCES

Requested by: Representatives Ives, Lemmond, Culpepper, Senator Warren
RESERVE FUNDS MAY BE USED FOR MUSEUM OF THE ALBEMARLE OR OTHER ALBEMARLE AREA HISTORIC SITES

Sec. 11. Of the funds appropriated in Section 2 of Chapter 324 of the 1995 Session Laws to the Department of Cultural Resources, the sum of forty-seven thousand eight hundred eighty-seven dollars (\$47,887) which is in reserve in the budget of the Department of Cultural Resources for the 1996-97 fiscal year may be used either for the Museum of the Albemarle or for other Albemarle area historic sites.

Requested by: Representative Culpepper, Senator Warren
ROANOKE ISLAND HISTORICAL ASSOCIATION

Sec. 11.1. (a) G.S. 143-200 reads as rewritten:

" 143-200. Members of board of directors; terms; appointment.

The governing body of said Association shall be a board of directors consisting of the Governor of the State, the Attorney General and the Secretary of Cultural Resources as ex officio members, and the following 21 members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of two years and until their successors are appointed. Appointments thereafter shall be made by the membership of the Association in regular annual meeting or special meeting called for such purpose, and in purpose. In the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. If a vacancy occurs between annual meetings, the board of directors may fill the vacancy until the next annual meeting. All vacancies occurring on the board of directors not filled by the board of directors within 30 days of the vacancy shall be filled by the Governor of the State."

(b) This section is effective upon ratification.

Requested by: Representatives Ives, Lemmond, Senator Warren
**DEPARTMENT OF CULTURAL RESOURCES TO REVIEW
 ADMISSION RATES FOR HISTORIC SITES**

Sec. 11.2. The Department of Cultural Resources shall review the admission fees and concession prices charged at each historic site. The Department shall evaluate on a site-by-site basis whether those charges are competitive with the admission fees and concession prices charged at other historic sites and how an increase in prices would impact visitation of each site. The Department of Cultural Resources shall report its findings and recommendations to the 1997 General Assembly.

Requested by: Senators Warren, Sherron, Representatives Ives, Lemmond
**DEPARTMENT OF CULTURAL RESOURCES RETAIN HISTORICAL
 PUBLICATIONS RECEIPTS**

Sec. 11.3. The Historical Publications Section, Division of Archives and History, Department of Cultural Resources, may retain the receipts, including over-realized receipts, from the sale of its publications. The receipts from the sale of those publications retained by the Historical Publications Section, Division of Archives and History, Department of Cultural Resources, shall not revert, but shall be used to reprint the publications.

Requested by: Senators Warren, Sherron, Representatives Ives, Lemmond
**DEPARTMENT OF CULTURAL RESOURCES TO STUDY THE
 HISTORIC SIGNIFICANCE OF THE PRINCEVILLE CEMETERY AND
 OF SOUTH GRANVILLE MEMORIAL GARDENS**

Sec. 11.4. The Department of Cultural Resources shall study the historical significance of the cemetery located in Princeville, the oldest African-American community in North America and shall also study the historical significance of the cemetery in Butner, known as South Granville Memorial Gardens. The Department shall consider what efforts should be taken to preserve and maintain the cemeteries, and shall also consider whether the cemetery in Princeville should be nominated to the National Register of Historic Places. The Department shall report its findings and recommendations to the 1997 General Assembly.

Requested by: Senators Plyler, Perdue, Odom
MATCH FOR ANTICIPATED NON-STATE FUNDS

Sec. 11.5. Of the funds appropriated to the Department of Cultural Resources, the sum of one million dollars (\$1,000,000) for the 1996-97 fiscal year shall be allocated to a Reserve to Match Anticipated Non-State Funds. These funds shall be matched on a dollar-for-dollars basis for the Lost Colony Outdoor Drama.

Requested by: Representatives Ives, Lemmond, Holmes, Creech, Esposito, Senators Warren, Sherron, Plyler, Perdue, Odom
PUBLIC LIBRARY GRANT IN AID FUNDS

Sec. 11.6. (a) Of the funds appropriated to the Department of Cultural Resources for the 1995-96 fiscal year, the sum of two hundred

eighty-four thousand dollars (\$284,000) shall not revert at the end of the fiscal year but shall remain available to the Department to be used as grants in aid to public libraries. The Department of Cultural Resources may use up to the full amount of the two hundred eighty-four thousand dollars (\$284,000) of the funds that shall not revert under this section for grants to public libraries.

(b) This section becomes effective June 30, 1996.

PART 12. DEPARTMENT OF INSURANCE

Requested by: Representatives Ives, Lemmond, Senator Warren

CONSTRUCTION CODE RECEIPTS

Sec. 12. Section 13 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 13. Departmental receipts realized by the Department of Insurance in excess of amounts approved for expenditure by the General Assembly, as adjusted by the Office of State Budget and Management to reflect the distribution of statewide reserves, shall revert to the General Fund at the end of each fiscal year. This section shall not apply to receipts realized by the Department from the sale of copies of the State construction code if the receipts are used for the purchase of copies of the code for sale to the public, except that unspent construction code receipts shall revert to the General Fund at the end of each fiscal year."

PART 13. DEPARTMENT OF SECRETARY OF STATE

Requested by: Representatives Ives, Lemmond, Senator Warren

INVESTOR PROTECTION AND EDUCATION TRUST FUND

Sec. 13. Article 4 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"§ 147-54.5. Investor Protection and Education Trust Fund; administration; limitations on use of the Fund.

(a) The Investor Protection and Education Trust Fund created in the Department of the Secretary of State as an expendable trust account to be used by the Secretary of State only for the purposes set forth in this section.

(b) The proceeds of the Investor Protection and Education Trust Fund shall be used by the Secretary of State to provide investor protection and education to the general public and to potential securities investors in the State through:

(1) The use of the media, including television and radio public service announcements and printed materials; and

(2) The sponsorship of educational seminars, whether live, recorded, or through other electronic means.

(c) The proceeds of the Investor Protection and Education Trust Fund shall not be used for:

(1) Travel expenses of the Secretary of State or staff of the Department of the Secretary of State, unless those expenses are directly related to specific investor protection and education activities performed in accordance with this section.

(2) General operating expenses of the Department of the Secretary of State, or to supplement General Fund appropriations to the Department of the Secretary of State for other than investor education and protection activities.

(3) Promoting the Secretary of State or the Department of the Secretary of State.

(d) Expenditures from the Investor Protection and Education Trust Fund shall be made in compliance with State purchasing and contracting requirements for competitive bidding in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.

(e) Revenues derived from consent orders resulting from negotiated settlements of securities investigations by the Secretary of State shall be credited to the Fund. The State Treasurer shall invest the assets of the Fund according to law. Any interest or other investment income earned by the Investor Protection and Education Trust Fund shall remain in the Fund. The balance of the Investor Protection and Education Trust Fund at the end of each fiscal year shall not revert to the General Fund.

(f) Beginning January 1, 1997, the Department of the Secretary of State shall report annually to the General Assembly's Fiscal Research Division and to the Joint Legislative Commission on Governmental Operations on the expenditures from the Investor Protection and Education Trust Fund and on the effectiveness of investor awareness education efforts of the Department of the Secretary of State."

PART 13A. STATE BOARD OF ELECTIONS

Requested by: Representatives Ives, Lemmond, Senators Warren, Sherron
EQUIPMENT FUNDS

Sec. 13A. Notwithstanding G.S. 143-16.3, the State Board of Elections may use up to fifty thousand dollars (\$50,000) of funds available to purchase a copy machine.

PART 14. OFFICE OF STATE CONTROLLER

Requested by: Representative Creech, Senator Warren
NORTH CAROLINA INFORMATION HIGHWAY

Sec. 14. (a) The funds appropriated in this act to the Office of the State Controller for the operation of the North Carolina Information Highway shall be used only for costs incurred by the Office of the State Controller related to the operations and support of the North Carolina Information Highway. No funds appropriated in this act shall be expended to pay Minimum Monthly usage charges for North Carolina Information Highway Services.

(b) Of the funds appropriated to the Office of the State Controller for the North Carolina Information Highway (NCIH), an amount not to exceed five hundred thousand dollars (\$500,000) shall be used to expand the long distance capacity and provide for the establishment of regional hubs in each of the seven LATAS in North Carolina. The remaining funds shall be used to help defray the costs of existing NCIH sites except those located at

university sites other than East Carolina University academic affairs campus. Any savings accrued shall be placed in reserve in the Office of the State Controller for consideration by the 1997 General Assembly.

(c) Beginning October 1, 1996, the State Controller shall report quarterly to the Joint Legislative Commission on Governmental Operations regarding the costs incurred by the Office of the State Controller related to the operations and support of the North Carolina Information Highway and the savings placed in reserve in the Office of the State Controller.

Requested by: Representatives Ives, Lemmond, Senators Warren, Little, Sherron

RESERVE FOR THE YEAR 2000 CONVERSION OF THE STATE'S COMPUTER SYSTEM

Sec. 14.1. The Office of the State Controller shall include in its charges for data processing services costs of converting computer applications to operate properly at the turn of the century. The Office of the State Controller shall develop procedures for managing the year 2000 conversion.

PART 15. DEPARTMENT OF REVENUE

Requested by: Senators Kerr, Sherron, Hoyle, Representatives Gray, Allred
EXPAND HOMESTEAD EXEMPTION

Sec. 15.1. (a) G.S. 105-277.1 reads as rewritten:

"§ 105-277.1. Property classified for taxation at reduced valuation.

(a) Exclusion. -- The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first ~~fifteen thousand dollars (\$15,000)~~ twenty thousand dollars (\$20,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) Is at least 65 years of age or totally and permanently disabled.
- (2) Has an income for the preceding calendar year of not more than ~~eleven thousand dollars (\$11,000)~~ fifteen thousand dollars (\$15,000).
- (3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(b) Definitions. -- When used in this section, the following definitions shall apply:

- (1) Code. -- The Internal Revenue Code, as defined in G.S. 105-228.90.
- (1a) Income. -- Adjusted gross income, as defined in section 62 of the Code, plus all other moneys received from every source other

than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. -- A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.

(3) Permanent residence. -- A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(4) Totally and permanently disabled. -- A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. -- An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through April 15 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner shall apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. -- Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. -- Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she shall not be required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Multiple Ownership. -- A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife

and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the property. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed ~~fifteen thousand dollars (\$15,000)~~, the exclusion amount provided in this section."

(b) G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

**'PROPERTY TAX RELIEF FOR ELDERLY AND
PERMANENTLY DISABLED PERSONS.**

North Carolina excludes from property taxes the first ~~fifteen thousand dollars (\$15,000)~~ twenty thousand dollars (\$20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed ~~eleven thousand dollars (\$11,000)~~, fifteen thousand dollars (\$15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above ~~eleven thousand dollars (\$11,000)~~, fifteen thousand dollars (\$15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15."

(c) G.S. 105-277.1A reads as rewritten:

"§ 105-277.1A. Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit

attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars (\$11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars (\$11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars (\$15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

~~(b) In addition to the list required by subsection (a) of this section, the county or city may provide a supplemental list on December 1.~~

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of ~~the~~ a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this ~~section~~ subsection in 1991 the amount it was entitled to receive in 1991.

~~(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.~~

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration."

(d) This section is effective for taxes imposed for taxable years beginning on or after July 1, 1997.

Requested by: Senators Perdue, Warren, Kerr, Representatives Holmes, Creech, Esposito

FEDERAL PENSION WITHHOLDING

Sec. 15.2. Of the funds appropriated to the Department of Revenue for the 1996-97 fiscal year the sum of eighty-nine thousand seven hundred fifty dollars (\$89,750) shall be used for start-up costs for participation in the United States Office of Personnel Management's voluntary program for withholding State income tax from civil service pension benefits.

Requested by: Senator Plyler, Representatives Holmes, Creech, Esposito

MODIFY STATE PORTS TAX INCENTIVE

Sec. 15.3. (a) G.S. 105-130.41(a) reads as rewritten:

"(a) Credit. -- A taxpayer whose waterborne cargo is loaded onto or unloaded from an ocean carrier calling at the State-owned port terminal at Wilmington or Morehead City, without consideration of the terms under which the cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling (in or out), and throughput charges assessed on the cargo for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to forest products, break-bulk cargo and container cargo, including less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary."

(b) G.S. 105-151.22(a) reads as rewritten:

"(a) Credit. -- A taxpayer whose waterborne cargo is loaded onto or unloaded from an ocean carrier calling at the State-owned port terminal at Wilmington or Morehead City, without consideration of the terms under which the cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling (in or out), and throughput charges assessed on the cargo for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to forest products, break-bulk cargo and container cargo, including less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary."

(c) This section is effective for taxable years beginning on or after January 1, 1996.

Requested by: Senator Perdue, Representative Gray

SOFT DRINK TAX ON MILK DRINKS

Sec. 15.4. (a) G.S. 105-113.46 reads as rewritten:

"§ 105-113.46. *Exemptions.*

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision ~~(2), (3),~~ (3) or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

- ~~(1) A natural liquid milk drink produced by a farmer or a dairy.~~
- ~~(2) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1), milk.~~
- (3) Natural juice.
- (3a) Juice that would be natural if it did not contain sugar.
- (4) Natural water.
- (5) A base product used to make a bottled soft drink subject to tax under this Article.
- (6) Coffee or tea in any form.
- (7) A bottled soft drink or base product sold outside the State.
- (8) A bottled soft drink or base product sold to the federal government.
- (9) A base product for domestic use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink."

(b) G.S. 105-113.47(a) reads as rewritten:

"(a) Requirement. -- To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

- ~~(1) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).~~
- (2) A natural juice bottled soft drink.
- (3) A natural juice concentrate.
- (4) A juice concentrate or juice bottled soft drink that would be natural if it did not contain sugar."

(c) This section is effective retroactively as of October 1, 1991. A taxpayer who paid an excise tax on a product that is exempt under this section may apply for a refund of the tax by submitting an application for refund to the Department of Revenue by January 1, 1997. A taxpayer who submits a timely application may receive a refund in an amount equal to the amount of taxes paid on the item since October 1, 1991, along with interest at the rate provided in G.S. 105-266 for refunds of overpaid taxes. If any penalties have been assessed for failure to pay this tax, these penalties shall be waived and, if the penalties have been paid, they shall be refunded to the taxpayer. The application must be in the form and contain the information required by the Secretary of Revenue.

Requested by: Senators Warren, Sherron, Representatives Ives, Lemmond
DATA PROCESSING FUNDS

Sec. 15.5. (a) Of the funds appropriated to the Department of Revenue for the 1995-96 fiscal year, the sum of two million dollars

(\$2,000,000) shall not revert at the end of the fiscal year but shall remain available for expenditure to cover a deficit for the 1995-96 fiscal year of up to two million dollars (\$2,000,000) in the funds available to pay the State Information Processing System for data processing costs.

(b) This section becomes effective June 30, 1996.

Requested by: Representatives Ives, Lemmond, Senators Warren, Sherron
ASSESS REVENUE STAFF REQUIREMENTS

Sec. 15.6. The State Budget Office, Management and Productivity Unit shall work with the Department of Revenue to assess the Department's staff requirements. Specifically, it shall determine the variety of unit costs related to workload as influenced by existing laws and resulting policies and procedures adopted by the Department of Revenue.

The State Budget Officer and the Secretary of Revenue shall make a joint final report to the House and Senate Appropriations Subcommittees on General Government by March 1, 1997, on the results of this assessment.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

NC MEMORIAL HOSPITAL SALES TAX REFUNDS

Sec. 15.7. (a) G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(21) The University of North Carolina Hospitals at Chapel Hill."

(b) This section becomes effective January 1, 1997, and applies to taxes paid on or after that date.

PART 16. COLLEGES AND UNIVERSITIES

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little, Conder

AID TO STUDENTS ATTENDING PRIVATE COLLEGES

Sec. 16. Section 15 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 15. (a) Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, 116-21, and 116-22. These funds shall provide up to ~~five hundred fifty dollars (\$550.00)~~ six hundred dollars (\$600.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

These funds shall be placed in a separate, identifiable account in each eligible institution's budget or chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year. Each student awarded a scholarship from this account shall be notified of the source of the funds and of the amount of the award. Funds not utilized under G.S. 116-19 shall be for the tuition grant program as defined in subsection (b) of this section.

(b) In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational

institutions located within the State, or to students attending these institutions, there is granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, a sum, not to exceed ~~one thousand two hundred fifty dollars (\$1,250)~~ one thousand three hundred dollars (\$1,300) per academic year, which shall be distributed to the student as hereinafter provided.

The tuition grants provided for in this section shall be administered by the State Education Assistance Authority pursuant to rules adopted by the State Education Assistance Authority not inconsistent with this section. The State Education Assistance Authority shall not approve any grant until it receives proper certification from an approved institution that the student applying for the grant is an eligible student. Upon receipt of the certification, the State Education Assistance Authority shall remit at such times as it shall prescribe the grant to the approved institution on behalf, and to the credit, of the student.

In the event a student on whose behalf a grant has been paid is not enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which the grant was paid, the institution shall refund the full amount of the grant to the State Education Assistance Authority. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether the institution has properly certified eligibility and enrollment of students and credited grants paid on the behalf of the students.

In the event there are not sufficient funds to provide each eligible student with a full grant:

- (1) The Board of Governors of The University of North Carolina, with the approval of the Office of State Budget and Management, may transfer available funds to meet the needs of the programs provided by subsections (a) and (b) of this section; and
- (2) Each eligible student shall receive a pro rata share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Any remaining funds shall revert to the General Fund.

(c) Expenditures made pursuant to this section may be used only for secular educational purposes at nonprofit institutions of higher learning. Expenditures made pursuant to this section shall not be used for any student who:

- (1) Is incarcerated in a State or federal correctional facility for committing a Class A, B, B1, or B2 felony; or
- (2) Is incarcerated in a State or federal correctional facility for committing a Class C through I felony and is not eligible for parole or release within 10 years.

(d) The State Education Assistance Authority shall document the number of full-time equivalent North Carolina undergraduate students that are enrolled in off-campus programs and the State funds collected by each institution pursuant to G.S. 116-19 for those students. The State Education Assistance Authority shall also document the number of scholarships and the amount of the scholarships that are awarded under G.S. 116-19 to students enrolled in off-campus programs. An 'off-campus program' is any program

offered for degree credit away from the institution's main permanent campus.

The State Education Assistance Authority shall report to the Joint Legislative Commission on Governmental Operations by March 1, 1997, regarding its findings."

Requested by: Representatives Grady, Preston, Senators Plexico, Winner
DISTANCE LEARNING INITIATIVES

Sec. 16.1. Of the funds appropriated by this act to The University of North Carolina Board of Governors, the sum of one million two hundred thousand dollars (\$1,200,000) in nonrecurring funds and the sum of five hundred thousand dollars (\$500,000) in recurring funds shall be allocated to North Carolina State University to furnish the Engineering Graduate Research Center and to operate distance learning programs. Engineering programs offered through this funding shall be a cooperative effort among North Carolina State University, North Carolina Agricultural and Technical State University, and the University of North Carolina at Charlotte.

An additional amount of two million two hundred fifty-five thousand dollars (\$2,255,000) appropriated by this act to the Board of Governors shall be allocated and used for distance learning and capacity enhancing alternatives, including expansion of the "2 + 2" engineering programs offered through North Carolina State University, incentives for summer school enrollments, and other initiatives planned by the Board of Governors.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Little, Conder

UNC EQUITY OF FUNDING

Sec. 16.2. (a) Notwithstanding G.S. 116-30.3, the five constituent institutions (Appalachian State University, East Carolina University, University of North Carolina at Charlotte, University of North Carolina at Greensboro, and University of North Carolina at Wilmington) cited in the study of equity of funding among the constituent institutions of The University of North Carolina as receiving lower than average per pupil funding in several comparisons, shall not be required to revert two percent (2%) of their General Fund appropriations for the 1996-97 fiscal year. These funds shall be used to improve areas of need that can be addressed with nonrecurring funds.

(b) Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1996-97 fiscal year, the sum of two million two hundred twenty-six thousand dollars (\$2,226,000) in nonrecurring funds shall be used to assure that the total funds retained pursuant to subsection (a) of this section and the additional funds from this allocation shall provide a minimum of thirty-seven and one-half percent (37.5%) of the funding needs identified for each of the campuses cited as having funding below an equitable level in the Board of Governors' Phase I final report on "An Analysis of Funding Equity in The University of North Carolina."

Requested by: Representatives Grady, Preston, Senators Plexico, Winner

CENTER FOR THE PREVENTION OF SCHOOL VIOLENCE

Sec. 16.3. The General Assembly recommends that the Governor continue funding the Center for Prevention of School Violence from the current source of grant monies through the 1996-97 fiscal year.

Requested by: Representatives Holmes, Creech, Esposito, Grady, Preston, Cummings, Senators Plexico, Winner, Little, Conder

EVALUATE UNIVERSITY RESIDENCES FOR FIRE SAFETY AND REPORT ON ESTIMATED COST TO INSTALL ANY NEEDED FIRE DETECTION AND SAFETY EQUIPMENT

Sec. 16.4. (a) The Board of Governors of The University of North Carolina shall survey each constituent institution and the North Carolina School of Science and Mathematics regarding its campus residential facilities, potential fire hazards at those facilities, and the fire detection and safety equipment currently installed in those facilities. Each constituent institution shall indicate whether each residential facility on its campus has an adequate fire alarm system including smoke detectors and fire sprinklers, and, if not, the estimated cost to install adequate fire detection and safety equipment. The Board of Governors shall report as soon as possible to the General Assembly regarding the findings of the survey.

(b) The Board of Governors of The University of North Carolina shall begin to address fire safety needs in campus residential facilities including the North Carolina School of Science and Mathematics during the 1996-97 fiscal year. The Board of Governors shall give top priority to those fire safety needs that are determined to be the most egregious and shall address those needs first. The Board of Governors shall use available reserves in institutional housing trust funds, as well as funds allocated to the Board from the Reserve for Repairs and Renovations to comply with this section. Should the Board of Governors allocate funds from the Reserve for Repairs and Renovations for fire safety improvements in campus residential facilities not supported from the General Fund, it shall first find that sufficient funds are not available from other sources. Any such finding shall be included in the Board's submission to the Joint Legislative Commission on Governmental Operations on the proposed allocation of funds.

(c) The Board of Governors of The University of North Carolina shall include in its budget requests for the 1997-99 biennium the estimated amount needed to address any remaining fire safety needs of the residential facilities located on its campuses including the North Carolina School of Science and Mathematics.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

FACILITATE FINANCING OF FIRE WARNING AND SUPPLEMENTAL FIRE PROTECTION SYSTEMS IN STUDENT HOUSING

Sec. 16.5. (a) Article 1 of Chapter 116 of the General Statutes is amended by adding a new Part to read:

"Part 7. Fire Safety.

"§ 116-44.6. Definitions.

Unless the context clearly requires another meaning, the following definitions apply in this Part:

- (1) Fraternity or sorority. -- A social, professional, or educational incorporated organization that, by official recognition, is affiliated or identified with a public or nonpublic institution of higher education in this State and which maintains a living facility that provides accommodations for five or more students enrolled at the recognition-granting institution of higher education.
- (2) Fund. -- The Fire Safety Loan Fund authorized by this Part.
- (3) Living facility. -- A sleeping facility capable of overnight accommodation and other capabilities which support continuous occupancy.
- (4) Residence hall. -- A living facility maintained by a public or nonpublic institution of higher education in North Carolina or by the North Carolina School of Science and Mathematics for use by enrolled students.
- (5) Supplemental fire safety protection system. -- A water system capability which is sized to accommodate the added water supply pressure and volume required for building fire protection.
- (6) Water system. --
 - a. A city, county, or sanitary district; or
 - b. A water and sewer authority, a metropolitan water district, or county water and sewer district, established pursuant to Chapter 162A of the General Statutes.

"§ 116-44.7. Exemption from certain fees and charges.

No water system serving a residence hall or fraternity or sorority housing shall levy or collect any water-meter fee, water-hydrant fee, tap fee, or similar service fee on a residence hall or fraternity or sorority house with respect to supporting a supplemental fire safety protection system in excess of the actual cost to the water system to support the fire safety protection system.

"§ 116-44.8. Fire Safety Loan Fund.

(a) There is established the Fire Safety Loan Fund. The Fund shall be a revolving loan fund for installing fire safety equipment and systems in fraternity and sorority housing.

(b) The Fund shall be administered by the Office of the State Treasurer, and that office may establish the policies and procedures that it deems appropriate for the operation of the Fund. The Office of the State Treasurer may enlist the assistance of other State departments or entities which have expertise that would be useful in administering the Fund, and those State departments or entities shall provide the assistance requested.

(c) The Fund shall be operated on a revolving basis with proceeds from the repayment of prior loans being made available for subsequent loans.

(d) Loans from the Fund shall be secured by a first or second mortgage or other pledge. Loans shall be made for a period not to exceed 10 years. Interest shall not be charged on loans from the Fund."

(b) Of the funds allocated by this act to the Board of Governors of The University of North Carolina from the Reserve for Repairs and Renovations, the sum of one million two hundred sixty-three thousand eight hundred

three dollars (\$1,263,803) for the 1996-97 fiscal year shall be used to add central fire alarm and warning systems to residence halls at the constituent institutions of The University and at the North Carolina School of Science and Mathematics that are not currently so equipped. The central alarm and warning systems to be installed shall be interconnected with a supervisory campuswide system of reporting into a station that is continuously monitored.

(c) Of the funds appropriated to the Office of the State Treasurer, the sum of one million dollars (\$1,000,000) for the 1996-97 fiscal year shall be used for the purpose of establishing the Fire Safety Loan Fund for installing fire safety equipment and systems in fraternity and sorority housing at public and nonpublic institutions of higher education located in North Carolina as authorized by G.S. 116-44.8.

(d) Subsection (a) of this section is effective upon ratification.

Requested by: Senators Perdue, Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

REPORT ON SERVICES PROVIDED BY FACULTY AND STUDENT ADVISORS

Sec. 16.6. The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee prior to January 2, 1997, on the implementation by each constituent institution of the recommendations included in the report on "Academic Advising in the University of North Carolina." The report shall include the following information collected from each constituent institution: (i) the progress of the institution's initiative to improve advising, (ii) the results of the senior survey referenced in the report on "Academic Advising in the University of North Carolina", and (iii) the plans of each constituent institution to address specifically any item of student dissatisfaction on the senior survey that had a score of dissatisfaction above thirty-three percent (33%).

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings, McMahan

PARENTAL SAVINGS TRUST FUND

Sec. 16.7. Article 23 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"§ 116-209.25. Parental Savings Trust Fund.

(a) Policy. -- The General Assembly of North Carolina hereby finds and declares that encouraging parents and other interested parties to save for the postsecondary education expenses of eligible students is fully consistent with and furthers the long-established policy of the State to encourage, promote, and assist education as more fully set forth in G.S. 116-201(a).

(b) Parental Savings Trust Fund. -- There is established a parental savings trust fund to be administered by the State Education Assistance Authority to enable qualified parents to save funds to meet the costs of the postsecondary education expenses of eligible students.

(c) Contributions to the Trust Fund. -- The Authority is authorized to accept, hold, and disburse contributions, and interest earned on such

contributions, from qualified parents and other interested parties in the Parental Savings Trust Fund. The contributions to the Parental Savings Trust Fund shall be held by the Authority in a separate institutional trust fund and, as such, contributions to the trust fund shall be invested by the State Treasurer as authorized in G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. The contributions to the Parental Savings Trust Fund shall not be considered State moneys, assets of the State, or State revenue for any purpose.

(d) Administration of the Trust Fund. -- The Authority is authorized to develop and perform all functions necessary and desirable to administer the Parental Savings Trust Fund and to provide such other services as the Authority shall deem necessary to facilitate participation in the Parental Savings Trust Fund.

(e) Loan Program. -- The Authority is authorized to develop and administer a loan program in conjunction with the Parental Savings Trust Fund to provide loan assistance to qualified parents and interested parties in order to facilitate the postsecondary education of eligible students. All funds appropriated to, or otherwise received by the Authority for loans under this section, all funds received as repayment of such loans, and all interest earned on these funds shall be placed in an institutional trust fund. This institutional trust fund may be used only for loans made to qualified parents and interested parties who contributed to the Parental Savings Trust Fund and administrative costs associated with the recovery of funds advanced under this loan program."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plexico, Winner

SUPERCOMPUTER AND THE RESEARCH AND EDUCATION NETWORK/BOARD OF GOVERNORS TO MAINTAIN FUNDS

Sec. 16.8. The Board of Governors of The University of North Carolina shall maintain the funds transferred by this act for the purchase of the Supercomputer and the Research and Education Network in a central identifiable budget purpose.

Requested by: Senators Plyler, Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

AGRICULTURE RESEARCH FUNDS

Sec. 16.9. Of the funds appropriated to the Board of Governors of The University of North Carolina for the 1996-97 fiscal year the following sums shall be allocated as follows:

- (1) The sum of \$1,000,000 in nonrecurring funds shall be allocated for research efforts focused upon eradicating diseases in the State's turkey population. Any of these funds remaining at the end of the 1996-97 fiscal year shall not revert but shall remain available for use pursuant to this section.
- (2) The sum of \$90,000 in nonrecurring funds shall be allocated to enhance fish hatcheries research and production.
- (3) The sum of \$250,000 in nonrecurring funds shall be allocated for turfgrass research.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

UNC FUNDING FOR NEW ENROLLMENT POLICY CHANGE

Sec. 16.10. In requesting funds for additional students, the Board of Governors of The University of North Carolina shall revise its methodology to ensure sufficient funding for support services needed due to enrollment growth. The policy change shall be implemented for the 1996-97 fiscal year and each fiscal year thereafter. Funds are provided in this act to implement this policy change for the 1996-97 fiscal year.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

ACADEMIC ENHANCEMENT FUNDS

Sec. 16.11. Of the funds appropriated to The University of North Carolina Board of Governors, the sum of seventeen million eight hundred thousand dollars (\$17,800,000) shall be allocated to constituent institutions classified as Research University I campuses in direct proportion to the funds to be raised on each campus for the 1996-97 fiscal year from the tuition increases authorized under Section 15.15 of Chapter 507 of the 1995 Session Laws.

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

COMPREHENSIVE PLAN FOR HIGHER EDUCATION ENROLLMENT

Sec. 16.12. Subsection (a) of Section 15.12 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(a) The Education Cabinet shall develop a comprehensive plan to meet the projected increase in higher education enrollments that result from the increased number of high school graduates and nontraditional students needing worker retraining. The plan shall address questions of capacity and potential increases in space utilization. The plan shall also consider several funding strategies to encourage more balanced enrollment, such as funding additional credit hours above current levels for summer school and for off-campus degree programs, and incentive funding for private colleges to enroll more North Carolina residents. The Education Cabinet shall consider the capacity of the physical facilities of the private colleges and universities in developing its plan for additional incentives for private colleges.

The Education Cabinet shall also coordinate the planning efforts of the Board of Governors of The University of North Carolina, the Department of Community Colleges, and the North Carolina Association of Private and Independent Colleges and Universities to meet the projected increase in higher education enrollments.

A representative from the North Carolina Association of Private and Independent Colleges and Universities shall participate in the deliberations and decision-making of the Education Cabinet in accordance with G.S. 116C-1. The Board of Governors and the Department of Community Colleges shall provide staff assistance to the Education Cabinet in the development of the comprehensive plan. The Education Cabinet shall

estimate the fiscal impact of all alternatives and proposals for dealing with the projected enrollment.

The Education Cabinet shall make a preliminary report on the comprehensive plan to the Joint Education Oversight Committee by April 15, 1996, and shall submit a final report to the Committee by November 15, 1996."

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

HEALTH INSURANCE FOR GRADUATE ASSISTANTS

Sec. 16.13. Notwithstanding any other provision of law, a special responsibility constituent institution of The University of North Carolina may use the funding flexibility granted to it to provide health insurance for graduate assistants from funds carried forward to the next fiscal year pursuant to G.S. 116-30.3.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

UNIVERSITY OF NORTH CAROLINA SYSTEM -- FUNDS TO REWARD EXCELLENCE IN TEACHING

Sec. 16.14. Effective September 1, 1996, the Board of Governors of The University of North Carolina shall develop policies for the distribution of an average one-half percent (1/2%) salary increase for teaching faculty members, to be given to those who have demonstrated excellence in teaching, except that the policies shall not apply to teaching faculty members at the University of North Carolina at Chapel Hill or at North Carolina State University.

PART 17. COMMUNITY COLLEGES

Requested by: Representatives Russell, Grady, Preston, Senators Plexico, Winner

COMPUTATION OF FTE FOR COURSES TAUGHT IN PRISONS

Sec. 17. Community colleges shall compute full-time equivalent (FTE) student hours on the bases of both contact hours and student membership hours for curriculum education programs that are taught in prison facilities and that are offered in compliance with the State Board of Community College's correctional course offering matrix. The State Board of Community Colleges shall report both counts to the General Assembly by January 15, 1997.

The 1997 General Assembly shall consider the question of whether to compute FTE for these courses on the basis of contact hours or on the basis of student membership hours.

Requested by: Representatives Russell, Grady, Preston, Cummings, Senators Perdue, Plexico, Winner, Little, Conder

IN-STATE TUITION FOR FAMILIES TRANSFERRED INTO STATE

Sec. 17.1. (a) G.S. 115D-39 reads as rewritten:
"§ 115D-39. *Student tuition and fees.*

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and G.S. 116-143.3, shall apply to students attending institutions operating pursuant to this Chapter; provided, however, that when an employer other than the armed services, as that term is defined in G.S. 116-143.3, pays tuition for an employee to attend an institution operating pursuant to this Chapter and when the employee works at a North Carolina business location, the employer shall be charged the in-State tuition ~~rate~~; provided further, however, a community college may charge in-State tuition to up to one percent (1%) of its out-of-state students, rounded up to the next whole number, to accommodate the families transferred by business, the families transferred by industry, or the civilian families transferred by the military, consistent with the provisions of G.S. 116-143.3, into the State. Notwithstanding these requirements, a refugee who lawfully entered the United States and who is living in this State shall be deemed to qualify as a domiciliary of this State under G.S. 116-143.1(a)(1) and as a State resident for community college tuition purposes as defined in G.S. 116-143.1(a)(2)."

(b) The State Board of Community Colleges shall adopt rules to implement this section, effective for the fall 1996 quarter.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner
ELIMINATION OF BARRIERS AMONG PUBLIC SCHOOLS, COMMUNITY COLLEGES, AND UNIVERSITIES/STUDY

Sec. 17.2. (a) The Education Cabinet shall study ways to eliminate barriers to cooperation among public schools, community colleges, and universities in the area of distance learning. The Education Cabinet shall develop a plan for sharing registration, credit hours, funding for full-time equivalent students (FTE), counseling and financial aid services, tuition receipts, and administrative responsibilities, and shall report to the General Assembly prior to January 31, 1997, on the plan it develops. The report shall include a list of any statutory or rule changes that are necessary prior to implementation of the plan and an explanation of why each change is necessary and appropriate.

(b) The State Board of Community Colleges shall examine ways to encourage pilot projects for higher education two plus two programs while continuing to recognize the community college system's statutory role as primary lead agency for providing vocational and technical job training programs.

Requested by: Representatives Grady, Preston, McMahan, Senators Plexico, Winner

COMMUNITY COLLEGES FUNDING FORMULAS/STUDY

Sec. 17.3. The State Board of Community Colleges shall undertake a comprehensive study of the funding formula used to distribute funds to local community colleges and shall make any recommendations for changes to the General Assembly by January 31, 1997. The study shall include, but not be limited to, the development of a plan to increase the level of funding for occupational extension courses to the funding level for curriculum courses and the cost of such a plan. In developing the plan, the State Board shall consider whether one or more colleges receive a disproportionate share of the occupational extension formula funds, the appropriateness of such a distribution, and any recommendations for changes in that distribution. The State Board of Community Colleges shall use Board Reserve funds to hire an outside, independent consultant to study the funding formula.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner
EXPENDITURE FOR NEW AND EXPANDING INDUSTRY/REPORT

Sec. 17.4. G.S. 115D-5 is amended by adding a new subsection to read:

"(i) The State Board of Community Colleges shall report to the Joint Legislative Education Oversight Committee on March 1 and September 1 of each year on expenditures for the New and Expanding Industry Program each fiscal year. The report shall include, for each company or individual that receives funds for New and Expanding Industry:

- (1) The total amount of funds received by the company or individual;
- (2) The amount of funds per trainee received by the company or individual;
- (3) The amount of funds received per trainee by the community college training the trainee;
- (4) The number of trainees trained by company and by community college; and
- (5) The number of years the companies or individuals have been funded.

The September 1, 1996, report shall include this information for the prior three fiscal years."

Requested by: Representatives Grady, Preston, Senators Winner, Plexico, Odom

UNIFORM MEDICAL HISTORY FORM/POSTSECONDARY INSTITUTIONS

Sec. 17.5. The State Board of Community Colleges and the Board of Governors of The University of North Carolina shall adopt a uniform student medical history form for use by all institutions in the North Carolina Community College System and by all of the constituent institutions of The University of North Carolina. This form shall be used for all new students enrolling after July 1, 1997, who are required to submit health forms.

The State Board of Community Colleges and the Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by December 15, 1996, on their progress in implementing the provisions of this section.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner
**DEPARTMENT OF COMMUNITY COLLEGES/BUDGET
 REALIGNMENT**

Sec. 17.6. (a) The Department of Community Colleges may realign its budget in accordance with the departmental reorganization plan adopted by the State Board of Community Colleges, which is in place June 1, 1996.

(b) The Department of Community Colleges shall prepare a response to the State Auditor's Performance Audit Report of April 1996, on the concern raised about the creation of the new Division of System Affairs and on what steps it has taken to address the issue raised with regard to this Division. The Department shall present its response to the Senate and House Appropriations Subcommittees on Education prior to February 15, 1997.

Requested by: Representatives Grady, Preston, Cummings, Senators Plexico, Winner, Conder, Little

CLARIFICATION OF FUND USE

Sec. 17.7. (a) G.S. 115D-5 is amended by adding a new subsection to read:

"(i) The State Board of Community Colleges shall use its Board Reserve Fund for feasibility studies, pilot projects, start-up of new programs, and innovative ideas. The State Board shall report to the Joint Legislative Education Oversight Committee on expenditures from the State Board Reserve Fund on January 15 and June 15 each year."

(b) Of the funds appropriated for the 1996-97 fiscal year to the Department of Community Colleges, two hundred thousand dollars (\$200,000) shall be used for start-up costs at the newest Hosiery Technology Center program created in 1995-96 and two hundred thousand dollars (\$200,000) shall be used for start-up costs for new community college programs serving the recently constructed Pasquotank Correctional Institution.

Requested by: Representatives Grady, Preston, Senators Plexico, Winner, Little

INFORMATION HIGHWAY SITES/COMMUNITY ACCESS

Sec. 17.8. It is the policy of the State to make all North Carolina Information Highway sites available to all public agencies for public use. The Education Cabinet shall adopt guidelines for ensuring public access to the university, community colleges, and public school information highway sites, and shall report these guidelines to the Joint Legislative Education Oversight Committee by January 2, 1997.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

FUNDS TO REWARD EXCELLENCE IN COMMUNITY COLLEGE TEACHING

Sec. 17.9. Effective September 1, 1996, the State Board of Community Colleges shall develop policies for the distribution of an average

one-half percent (1/2%) salary increase for teaching faculty members to be given to those who have demonstrated excellence in teaching.

PART 18. PUBLIC SCHOOLS

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

EXCEPTIONAL CHILDREN FUNDS

Sec. 18.1. The funds appropriated for exceptional children in this act shall be allocated as follows:

- (1) Each local school administrative unit shall receive for academically gifted children the sum of \$686.38 per child for four percent (4.0%) of the 1995-96 actual average daily membership in the local school administrative unit, regardless of the number of children identified as academically gifted in the local school administrative unit. The total number of children for which funds shall be allocated pursuant to this subdivision is 47,038 for the 1996-97 school year.
- (2) Each local school administrative unit shall receive for exceptional children other than academically gifted children the sum of \$2,059.14 per child for the lesser of (i) all children who are identified as exceptional children other than academically gifted children or (ii) twelve and five-tenths percent (12.5%) of the 1995-96 actual average daily membership in the local school administrative unit. The maximum number of children for which funds shall be allocated pursuant to this subdivision is 137,449 for the 1996-97 school year.

The dollar amounts allocated under this subsection for exceptional children shall also increase in accordance with legislative salary increments for personnel who serve exceptional children.

Requested by: Representatives Grady, Preston, Cummings, Senators, Plexico, Winner, Little, Conder

SUPPLEMENTAL FUNDING IN LOW-WEALTH COUNTIES/SMALL SCHOOL SYSTEM SUPPLEMENTAL FUNDING

Sec. 18.2. (a) Funds for supplemental funding. -- The General Assembly finds that it is appropriate to provide supplemental funds in low-wealth counties to allow those counties to enhance the instructional program and student achievement; therefore, of the funds appropriated to Aid to Local School Administrative Units, the sum of forty-six million four hundred eighty-three thousand eight hundred nine dollars (\$46,483,809) for the 1996-97 fiscal year shall be used for supplemental funds for schools. These funds shall be allocated and administered as provided in Section 17.1 of Chapter 507 of the 1995 Session Laws.

(b) Funds for small school systems. -- The State Board of Education shall allocate and administer funds appropriated for small school system supplemental funding as provided in Section 17.2 of Chapter 507 of the 1995 Session Laws.

(c) Reports. -- The State Board of Education shall report to the Appropriations Committees of the Senate and the House of Representatives prior to May 1, 1996, on whether counties supplanted local funds with the funds received pursuant to this section.

Requested by: Representatives Grady, Preston, Senators Winner, Plexico
FUNDS TO REDUCE CLASS SIZE IN GRADE 2

Sec. 18.3. The funds appropriated in this act to reduce class size in second grade shall be allocated by the State Board of Education to local school administrative units on the basis of one teacher for every 23 students in second grade. Local school administrative units shall use these funds (i) to reduce class size in second grade to 23 or fewer students or (ii) to hire reading teachers within kindergarten through third grade or otherwise reduce the student-teacher ratio within kindergarten through third grade.

For the purpose of calculating the maximum allowable class size for second grade, the ratio of teachers to students shall be 1 to 26.

Requested by: Representatives Grady, Preston, Senators Perdue, Plexico, Winner

SUBSTITUTE PAY FOR TEACHER ASSISTANTS

Sec. 18.4. G.S. 115C-12(8) reads as rewritten:

"(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. -- The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The pay for a substitute shall be fixed by the Board. If a teacher assistant ~~assigned to a classroom in kindergarten through third grade~~ acts as a substitute teacher for that classroom, teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees."

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

EXEMPTIONS FROM THE COMPUTER SKILLS TEST

Sec. 18.5. The State Board of Education may exempt a school from the implementation of the computer skills test if the school does not have adequate computer resources to instruct students in computer skills or to administer the test.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

MINIMUM VACATION LEAVE FOR BUS DRIVERS

Sec. 18.6. Notwithstanding any other provision of law, all school bus drivers, who have been employed for at least one academic year and who are not entitled to more than one day of paid vacation leave, are entitled to one day of paid vacation leave in each subsequent school year.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

SCHOOL PAY DATE FLEXIBILITY PILOT PROGRAM

Sec. 18.8. The State Board of Education may establish a pilot program to grant no more than four local boards of education additional flexibility in setting the pay dates for their 10-month employees. Notwithstanding the provisions of G.S. 115C-302(a) and G.S. 115C-316(a), local school administrative units participating in the pilot may pay 10-month employees for a full month of employment when days employed are less than a full month at the beginning or the end of the teachers' contract. No local school administrative unit shall be required to participate in the pilot. A local board participating in the pilot shall bear all of the cost of recouping funds prepaid for work never done and the cost of these funds that cannot be recouped.

The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the pilot program prior to September 1, 1998.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

FUNDS FOR NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS

Sec. 18.9. Section 17.11 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 17.11. The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. In order to apply for the NBPTS certification process, teachers must have three years or more of teaching experience, be currently teaching, have graduated from an accredited college or university, and hold a valid State teaching license. Upon successful completion of a year-long process of developing a portfolio of student work and videotapes of teaching/learning activities for NBPTS review and then participating in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination, teachers may become NBPTS-certified.

Of the funds appropriated to the Department of Public Instruction in this act, the sum of:

- (1) Two hundred thirty thousand seven hundred seventy-six dollars (\$230,776) for the 1995-96 fiscal year and nine hundred thirty-six

thousand five hundred seven dollars (\$936,507) for the 1996-97 fiscal year shall be used to pay for the National Board for Professional Teaching Standards (NBPTS) participation fee and for up to three days of approved paid leave for teachers participating in the NBPTS program during the 1995-96 school year and the 1996-97 fiscal year for State-paid teachers who (i) have completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina, or affiliated with The University of North Carolina, prior to application for NBPTS certification, and (ii) who have not previously received State funds for participating in any certification area in the NBPTS program. Teachers participating in the program shall take paid leave only with the approval of their supervisors.

A teacher for whom the State pays the participation fee (i) who does not complete the process or (ii) who completes the process but does not teach in a North Carolina public school for at least one year after completing the process, shall repay the certification fee to the State. Repayment is not required if the process is not completed or the teacher fails to teach for one year due to the death or disability of the teacher or other extenuating circumstances as may be recognized by the State Board.

- (2) Two hundred forty-five thousand five hundred eighty-two dollars (\$245,582) for the 1995-96 fiscal year and two hundred forty-three thousand eighty-seven dollars (\$243,087) for the 1996-97 fiscal year shall be used for an annual bonus of four percent (4%) of the teacher's State-paid salary for the 10-month school year for State-paid teachers who (i) completed three years of teaching in North Carolina schools operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina prior to application for NBPTS certification and (ii) received NBPTS certification. The bonus for each fiscal year shall be paid at the end of each full school year that the teacher teaches full time in a North Carolina school operated by local boards of education, the Department of Human Resources, the Department of Correction, or The University of North Carolina. Teachers shall continue this bonus only as long as they retain NBPTS certification."

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

ADDITIONAL EDUCATIONAL AND CAREER OPPORTUNITIES FOR TEACHER ASSISTANTS

Sec. 18.10. G.S. 115C-468 reads as rewritten:

"§ 115C-468. *Establishment of fund.*

(a) There is established a revolving fund known as the 'Scholarship Loan Fund for Prospective Teachers'.

(b) Criteria for awarding scholarship loans from the fund shall include measures of academic performance including grade point averages, scores on standardized tests, class rank, and recommendations of guidance counselors and principals. To the extent practical, an equal number of scholarships shall be awarded in each of the State's Congressional Districts.

(c) The Superintendent of Public Instruction may earmark up to twenty percent (20%) of the funds available for scholarship loans each year for awards to applicants who have been employed for at least one year as teacher assistants and who are currently employed as teacher assistants. Preference for these scholarship loans from funds earmarked for teacher assistants shall be given first to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished and then to applicants who already hold a baccalaureate degree or who have already been formally admitted to an approved teacher education program in North Carolina. The criteria for awarding scholarship loans to applicants who worked as teacher assistants for at least five years and whose positions as teacher assistants were abolished shall include whether the teacher assistant has been admitted to an approved teacher education program in North Carolina.

The Superintendent of Public Instruction may further earmark a portion of these funds each year for two-year awards to applicants who have been employed for at least one year as teacher assistants to attend community colleges to get other skills of use in public schools or to get an early childhood associate degree. The provisions of this Article shall apply to these scholarship loans except that a recipient of one of these scholarship loans may receive credit upon the amount due by reason of the loan as provided in G.S. 115C-471(5) or by working in a nonteaching position in the North Carolina public schools or by working in a licensed day care center in North Carolina."

Requested by: Representatives Preston, Grady, Senators Winner, Plexico
PROFESSIONAL TEACHING STANDARDS COMMISSION

Sec. 18.12. (a) G.S. 115C-295.1 reads as rewritten:

"§ 115C-295.1. *North Carolina Professional Teaching Standards Commission.*

(a) There is created the North Carolina Professional Teaching Standards Commission (the 'Commission'). The Commission shall be located administratively ~~within the Department of Public Instruction under the State Board of Education but shall exercise its powers and duties independently of the Department of Public Instruction. The Department of Public Instruction shall provide staff, offices, office equipment, and meeting space to the Commission.~~ State Board of Education.

(b) The purpose of the Commission is to establish high standards for North Carolina teachers and the teaching profession.

(c) The Beginning September 1, 1996, the Commission shall consist of the following 18 members:

- (1) ~~The State Superintendent of Public Instruction who shall serve as chair of the Commission.~~
- (2) ~~A representative of the North Carolina Association of Educators appointed by the Governor.~~

- ~~(3) A representative of the North Carolina Federation of Teachers appointed by the Governor.~~
- ~~(4) Three teachers, at least one of whom teaches in elementary school and one of whom teaches special education, appointed by the Governor.~~
- ~~(5) Two teachers, at least one of whom teaches in middle or junior high school, appointed by the President Pro Tempore of the Senate.~~
- ~~(6) Two teachers, at least one of whom teaches in high school, appointed by the Speaker of the House of Representatives.~~
- ~~(7) One school administrator, either a principal or a superintendent, appointed by the Governor.~~
- ~~(8) Two representatives of teacher education institutions, one of whom shall be a representative of a University of North Carolina institution and one of whom shall be a representative of a private teacher education institution, appointed by the Governor.~~
- ~~(9) One State Board member appointed by the chair of the State Board of Education.~~
- ~~(10) Two at-large members appointed by the Governor.~~
- ~~(11) Two at-large members, one of these members shall be appointed by the President Pro Tempore of the Senate, and one of these members shall be appointed by the Speaker of the House of Representatives.~~

16 members:

- (1) The Governor shall appoint four teachers from a list of names, including the State Teacher of the Year, submitted by the State Board of Education; one principal; one superintendent; and two representatives of schools of education, one of which is in a constituent institution of The University of North Carolina and one of which is in a private college or university.
- (2) The President Pro Tempore of the Senate shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.
- (3) The Speaker of the House of Representatives shall appoint three teachers who have different areas of expertise or who teach at different grade levels; and one at-large member.

In making appointments, the appointing authorities are encouraged to select qualified citizens who are committed to improving the teaching profession and student achievement and who represent the racial, geographic, and gender diversity of the State. Before their appointment to this Commission, with the exception of the at-large members, the members must have been actively engaged in the profession of teaching, in the education of students in teacher education programs, or in the practice of public school administration for at least three years, at least two of which occurred in this State. The members shall serve for two-year terms. Initial terms shall begin September 1, 1994. Vacancies in the membership shall be filled by the original appointing authority using the same criteria as provided in this subsection.

(d) The Commission shall elect a ~~vice-chair~~ chair, a vice-chair, and a secretary-treasurer from among its membership. In the absence of the chair, the vice-chair shall preside over the Commission's meetings. All members are voting members, and a majority of the Commission constitutes a quorum. The Commission shall adopt rules to govern its proceedings.

(e) Meetings of the Commission shall be held upon the call of the chair or the vice-chair with the approval of the chair.

(f) Members of the Commission ~~who are State or public school employees shall receive travel expenses as set forth in G.S. 138-6. All other Commission members shall receive per diem and travel expenses as set forth in G.S. 138-5.~~ shall receive compensation for their services and reimbursement for expenses incurred in the performance of their duties required by this Article, at the rate prescribed in G.S. 90B-5.

(g) The Commission may employ, subject to Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix compensation within the limits of funds available to the Commission."

(b) Article 20 of Chapter 115C of the General Statutes is amended by adding the following new sections to read:

"§ 115C-295.2. Powers and duties of the Commission.

(a) The North Carolina Teaching Standards Commission shall:

- (1) Develop and recommend to the State Board of Education professional standards or revisions to professional standards for North Carolina teachers.
- (2) Review the areas of teacher certification and recommend to the State Board of Education those areas that should be consolidated, redesigned, eliminated, or enhanced.
- (3) Consider current methods to assess teachers and teaching candidates, including the National Teacher Exam, the assessments of the National Board for Professional Teaching Standards, and alternative methods of assessment and recommend to the State Board of Education the implementation of rigorous and appropriate assessments for initial and continuing certification that are valid and reliable measures of professional practice.
- (4) Evaluate, develop, and recommend to the State Board a procedure for the assessment and recommendation of candidates for initial and continuing teacher certification.

For purposes of this subsection, the areas of teacher certification include initial certification, continuing certification, and certification renewal, and do not include teacher education programs.

(b) The Commission shall submit its recommendations under subsection (a) of this section to the State Board. The State Board shall adopt or reject the recommendations. The State Board shall not make any substantive changes to any recommendation that it adopts. If the State Board rejects the recommendation, it shall state with specificity its reasons for rejection; the Commission then may amend that recommendation and resubmit it to the State Board. The Board shall adopt or reject the amended recommendation. If the State Board fails to adopt the Commission's original and amended recommendation concerning the implementation of assessments for certification and the procedure for the assessment and recommendation of

candidates for teacher certification, the State Board may develop and adopt its own plan.

(c) The Commission shall submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee and the State Board of Education of its activities during the preceding year, together with any recommendations and findings regarding improvement of the teaching profession. The State Board shall submit a report by April 15, 1998, to the Joint Legislative Education Oversight Committee on the current status of assessments for certification and any changes to the procedures for assessment and recommendation of candidates for teacher certification.

"§ 115C-295.3. Professional Practices Board.

The State Board of Education shall establish a Professional Practices Board composed of teachers, school administrators, and representatives of the general public. The Professional Practices Board shall:

- (1) Develop a code of ethics for the teaching profession and develop procedures to investigate violations of the code.
- (2) Investigate complaints concerning violations of the code of ethics.
- (3) Make recommendations to the State Board of Education concerning the revocation and suspension of teacher certificates as the result of an ethics violation.

The Professional Practices Board shall recommend the code of ethics and the investigation procedures that it develops to the State Board of Education for its approval. The State Board of Education is the final authority in all decisions under this section, except as provided in the procedures concerning the due process rights of any person subject to an investigation under this section. The State Board of Education shall adopt rules necessary to implement this section."

Requested by: Representatives Holmes, Creech, Esposito, Senators Winner, Plexico

ALLOCATION OF FUNDS FOR SCHOOL TECHNOLOGY

Sec. 18.13. Funds appropriated in this act to the State School Technology Fund shall be allocated to local school administrative units on the basis of average daily membership.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

TEACHER VACATION LEAVE FOR ADOPTIVE PARENTS

Sec. 18.13A. G.S. 115C-302(f) reads as rewritten:

"(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless the teacher and local board of education agree otherwise.

~~The total of all such leave time shall be no more than 12 weeks."~~

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

COMPONENTS OF THE TESTING PROGRAM

Sec. 18.14. G.S. 115C-174.11(b) reads as rewritten:

"(b) Competency Testing Program.

- (1) The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship.
- (2) The tests shall be administered annually to all tenth grade students in the public schools. Students who fail to attain the required minimum standard for graduation in the tenth grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the tenth grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs.
- (3) The State Board of Education may develop and validate alternate means and standards for demonstrating minimum competence. These standards, which must be more difficult than the tests adopted pursuant to subdivision (1) of this subsection, may be passed by students in lieu of the testing requirement of subdivision (2) of this subsection.
- (4) ~~Funds appropriated for the purpose of remediation support for students who fail the high school competency test shall be distributed in accordance with rules promulgated by the State Board of Education. The State Board of Education shall allocate remediation funds to institutions administered by the Department of Human Resources on the same basis as funds allocated to other local education agencies."~~

Requested by: Senators Plexico, Winner, Little, Conder, Representatives Grady, Preston, Cummings

GLOBAL CURRICULUM PROGRAM

Sec. 18.15. The funds appropriated in this act for the Global Curriculum Program shall be used to improve the knowledge and understanding of middle and high school students in the areas of international and cultural studies, by identifying and training master teachers and providing orientations and materials. The State Board of Education may enter into contracts to implement the Program.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Little, Conder

REWARDS FOR TEACHER EXCELLENCE

Sec. 18.16. The State Board of Education shall study ways to reward teachers and other school personnel by linking some portion of future salary increases to the performance of students and to other factors that the board

determines are important for improving North Carolina schools. These other factors shall include methods for rewarding outstanding teachers to include skills and competency based pay, responsibility pay, expansion of school-performance awards under the ABC Program. This study should examine the operation of such programs in other states and local school districts, and the impact of these programs on improving student performance.

In the course of the study, the State Board shall take into account the differences in schools, school resources, and student populations, that different teachers and other school personnel encounter. The State Board shall report on the study to the Joint Legislative Education Oversight Committee prior to January 15, 1997.

Requested by: Senators Hobbs, Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

SCHOOL FACILITIES GUIDELINES

Sec. 18.17. (a) G.S. 115C-81(b) reads as rewritten:

"(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

- (1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically gifted, and the students with discipline and emotional problems;
- (2) A set of competencies, by grade level, for each curriculum area;
- (3) A list of textbooks for use in providing the curriculum;
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with special needs and, in particular, include appropriate modifications;
- (5) A program of remedial education;
- (6) Required support programs;
- (7) A definition of the instructional day;
- (8) Class size recommendations and requirements;
- (9) Prescribed staffing allotment ratios;
- (10) Material and equipment allotment ratios;
- (11) Facilities standards, guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
- (12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I."

(b) G.S. 115C-489.3(c) is repealed.

(c) G.S. 115C-521(c) reads as rewritten:

"(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract

with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. ~~Boards of education shall also not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor~~ No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for its erection, the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441(c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made ~~therefor. Provided, that this subsection shall not~~ therefor. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G.S. 133-1.1, the local board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or

grant to the treasurer of the local school administrative unit for which the loan or grant was made."

(d) G.S. 115C-521 is amended by adding a new subsection to read:

"(e) The State Board of Education shall establish within the Department of Public Instruction a central clearinghouse for access by local boards of education that may want to use a prototype design in the construction of school facilities. The State Board shall compile necessary publications and a computer database to distribute information on prototype designs to local school administrative units. All architects and engineers registered in North Carolina may submit plans for inclusion in the computer database and these plans may be accessed by any person. The original architect of record or engineer of record shall retain ownership and liability for a prototype design. The State Board may adopt rules it considers necessary to implement this subsection."

(e) School facilities guidelines and standards adopted by the State Board of Education before the effective date of this section shall remain in effect as guidelines only.

(f) This section is effective upon ratification.

Sec. 18.18. The School Facilities Task Force.

(a) There is created the School Facilities Task Force under the State Board of Education. The Task Force shall consist of the following members appointed by the State Board:

- (1) One member of the State Board.
- (2) One architect.
- (3) One representative from a school of architecture within a constituent institution of The University of North Carolina.
- (4) Two local school administrative unit employees with expertise in school facilities.
- (5) One representative of the North Carolina Association of County Commissioners.
- (6) One representative of the North Carolina School Boards Association.
- (7) One engineer.
- (8) Any other members the State Board considers necessary.

All members shall be voting members. The Task Force shall select a member of the Task Force to serve as its chair.

Members of the Task Force shall receive travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6.

The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff, office equipment, supplies, and meeting space to the Task Force.

(b) The Task Force shall:

- (1) Review the State Board's facilities guidelines for the construction, acquisition, renovation, and replacement of facilities, furniture, equipment, apparatus, and spaces for public schools to ensure they reflect both educational program appropriateness and long-term cost-efficiency.

- (2) Make recommendations to the State Board as to (i) which guidelines should be maintained, revised, or eliminated, and (ii) any new guidelines that it considers appropriate.
- (3) Develop and recommend to the State Board a procedure for the Board to follow when facilities plans are submitted by local school administrative units for the Board's review and comments.
- (4) Develop and recommend to the State Board a proposal in accordance with G.S. 115C-521(e) for the establishment of a central clearinghouse for prototype designs.
- (5) Submit its recommendations under this subsection to the State Board no later than December 1, 1996.

(c) Based upon a consideration of the recommendations of the Task Force, the State Board shall adopt (i) revised facilities guidelines to assist local school administrative units in the construction, acquisition, renovation, and replacement of facilities, furniture, equipment, apparatus, and spaces for public schools, (ii) the procedure for local school administrative units to follow when they submit school facilities plans for the State Board's review and comments, and (iii) a plan to establish within the Department of Public Instruction a central clearinghouse for prototype designs. The State Board shall submit a report by April 15, 1997, to the General Assembly that includes the revised facilities guidelines, the facilities review procedure, and the plan to establish a central clearinghouse for prototype designs. Upon submission of this report to the General Assembly, the Task Force shall terminate.

Requested by: Representatives Esposito, Grady, Preston, Senators Winner, Plexico

FUNDS TO IMPLEMENT THE ABC'S OF PUBLIC EDUCATION PROGRAM

Sec. 18.19. (a) Of the funds appropriated to State Aid to Local School Administrative Units, the State Board of Education may use up to twenty-four million five hundred thousand dollars (\$24,500,000) for the 1996-97 fiscal year to provide incentive funding for schools with higher than projected levels of improvement in student performance, in accordance with the ABC's of Public Education Program. The State Board of Education may allocate up to twenty-one million dollars (\$21,000,000) of these funds on a per-certified personnel basis for each eligible school and up to three million five hundred thousand dollars (\$3,500,000) on a per-teacher assistant basis for each eligible school.

It is the intent of the General Assembly to fully fund this program for the 1997-98 and subsequent fiscal years.

(b) Of the funds appropriated to State Aid to Local School Administrative Units, the State Board of Education may use up to one million dollars (\$1,000,000) for assistance teams to low-performing schools.

Requested by: Representatives Grady, Preston, Senators Plyler, Perdue, Odom

CERTIFIED PUBLIC SCHOOL PERSONNEL COMPENSATION STUDY

Sec. 18.20. (a) The Joint Legislative Commission on Governmental Operations shall contract with a qualified employee benefits consulting practice or research organization to conduct a comparative analysis of certified public school personnel compensation in North Carolina school systems. As part of the analysis, teachers base pay, the statewide salary schedule, incentives (i.e., local supplements, benefits, etc., if any), and benefits packages in other states, including southeastern states in the Southern Regional Education Board region, shall be compared with North Carolina's certified public school personnel salary schedule and benefits packages.

The scope of this comparative analysis shall be to determine, in those states who are regional neighbors as defined by the Southern Legislative Conference and the Southern Regional Education Board and in other states included in the study, how North Carolina certified public school personnel salaries and benefits rank within states in the region and other states included in the study, and the recurring cost to offer and maintain them at current levels. Median as well as average salary levels shall be determined for each state.

In addition, this comparative analysis shall identify 5 to 10 other states in the country most like North Carolina in terms of public school demographics (both students and certified personnel), public school funding policy and governing structure, entry, certification, and career requirements for teaching personnel, and other factors or conditions that most affect teachers salary and benefits, and compare and rank those salaries and benefits packages of these states to North Carolina certified public school personnel compensation packages.

Applying survey research methods considered to be reliable and valid statistically, the contractor shall determine the relative "economic value" of these benefits to the employees.

Finally, the contractor shall produce a "regional compensation survey model" as a product of this study of certified public school personnel that could then be made available for other studies of State employees in the executive and judicial branches of North Carolina State government. As part of the contractors work, training in conducting these other studies would be provided to legislative staff.

(b) In order to determine which organizations may be most qualified to conduct such an analysis, the Commission may appoint a subcommittee that shall be responsible for issuing a Request for Qualifications (RFQ). All firms responding to the RFQ shall be evaluated in accordance with procedures established by the subcommittee. Up to five firms may be invited to submit separate technical and cost proposals in response to the standard Request for Proposals (RFP).

A contract shall be awarded no later than October 15, 1996. The study shall begin no later than November 1, 1996. A progress report shall be issued to the subcommittee for review and approval no later than December 31, 1996, and a final report no later than April 1, 1997.

The Legislative Services Office shall provide such coordinating staff to the Joint Legislative Commission on Governmental Operations and its subcommittee as necessary.

Requested by: Senators Dannelly, Winner, Plexico, Little, Conder
Representatives Grady, Preston, Cummings

**NORTH CAROLINA STANDARDS BOARD FOR PUBLIC SCHOOL
ADMINISTRATORS**

Sec. 18.21. (a) G.S. 115C-290.5 reads as rewritten:

"§ 115C-290.5. Powers and duties of the Board; development of the North Carolina Public School Administrator Exam.

(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

- (1) ~~Develop~~ In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.
- (2) Establish and collect an application fee not to exceed fifty dollars (\$50.00), and an exam fee not to exceed one hundred fifty dollars (\$150.00). Fees collected under this Article shall be credited to the General Fund as nontax revenue.
- (3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.
- (4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.
- (5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.
- (6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
- (7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration.

(b) The Board may adopt a seal and affix it to any documents issued by the Board.

(c) The Standards Board shall submit its proposed exam to the State Board. The State Board shall adopt or reject the proposal. The State Board shall not make any substantive changes to any exam that it adopts. If the State Board rejects the proposal, it shall state with specificity its reasons for rejection; the Standards Board then may prepare another proposed exam and submit it to the State Board. If the State Board rejects the proposed exam on its second submission, the State Board may develop and adopt an exam by December 1, 1997. The General Assembly urges the State Board to utilize the Standards Board's proposed exam to the maximum extent that it is consistent with the State Board's policies if the State Board develops and adopts an exam. After an exam has been adopted, the Standards Board may submit suggested changes to the State Board for its approval."

(b) G.S. 115C-290.7(a) reads as rewritten:

"(a) The Standards Board shall recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

- (1) Pays the application fee established by the Standards Board.
- (2) Pays the exam fee established by the Standards Board.
- (3) Has a bachelors degree from an accredited college or accredited university and (i) has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education, Education, or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education.
- (4) Passes the exam."

(c) G.S. 115C-290.8 reads as rewritten:

"§ 115C-290.8. *Exemptions from requirements.*

The requirements of this Article do not apply to a person who, at any time during the five years preceding January 1, 1998, (i) completed an administrative internship as part of an approved graduate program in school administration and obtained an active State administrator/supervisor certificate, or (ii) was engaged in public school administration at either a public school in North Carolina or a school in North Carolina operated by the United States government, while in possession of an active State administrator/supervisor certificate. A person who is exempt from the requirements of this Article but applies to the Standards Board under this Article shall be subject to the Article."

(d) Subsections (b) and (c) of this section become effective January 1, 1998. The remainder of this section is effective upon ratification.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

SCHOOL LAW REVISION COMMISSION

Sec. 18.23. (a) The cochair of the Joint Legislative Education Oversight Committee shall appoint a subcommittee to revise the public school laws.

The subcommittee shall consist of equal numbers of members appointed by the Senate chair and the House chair. Either chair may appoint to the subcommittee members, including public members, who are not also members of the Committee.

Members of the subcommittee who are not members of the Committee may participate fully in all subcommittee business, including all deliberations and votes; however, these members are not members of the Committee for any other purpose.

(b) The subcommittee shall:

- (1) Conduct a comprehensive review of the public school laws;
- (2) Identify laws that are outdated, vague, unnecessary, or otherwise in need of revision; and

- (3) Revise the public laws so they are consistent with the North Carolina Constitution and with the goals of the General Assembly and the State Board of Education in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

Requested by: Senators Winner, Plexico, Little, Conder, Representatives Grady, Preston, Cummings

EDUCATION OF GIFTED STUDENTS

Sec. 18.24. (a) G.S. 115C-81(b)(1) reads as rewritten:

- "(1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically ~~gifted~~, or intellectually gifted students, and the students with discipline and emotional problems;"

(b) G.S. 115C-109 reads as rewritten:

"§ 115C-109. *Definition of children with special needs.*

The term 'children with special needs' includes, without limitation, all children from age five through age 20 who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, and other health impaired, and academically gifted, impaired."

(c) G.S. 115C-110(d) reads as rewritten:

"(d) The Board shall adopt rules or regulations covering:

- (1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;
- (2) Minimum standards for the individualized educational program for all children with special needs other than for ~~the academically gifted and the pregnant children~~, and for ~~the group educational program for the academically gifted children and the educational program for the pregnant children~~, who receive special education and related services; and
- (3) Such other rules or regulations as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Human Resources and Correction shall be involved in the development of the standards outlined under this subsection."

(d) G.S. 115C-110(k) reads as rewritten:

"(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than ~~academically gifted and pregnant children, and of group educational programs in meeting the educational needs of the~~

~~academically gifted children, and of educational programs in meeting the educational needs of the pregnant children."~~

(e) G.S. 115C-113 reads as rewritten:

"§ 115C-113. Diagnosis and evaluation; individualized education program.

(a) Before taking any action described in subsection (b), below, each local educational agency shall cause a multi-disciplinary diagnosis and evaluation to be made of the child. The State Board of Education shall establish special, simplified procedures for the diagnosis and evaluation of the pregnant child, which procedures shall focus on the particular needs of the pregnant child and shall exclude those procedures which are not pertinent to the pregnant. The local educational agency shall use the diagnosis and evaluation to determine if the child has special needs, diagnose and evaluate those needs, propose special education programs to meet those needs, and provide or arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one which includes, without limitation, medical (if necessary), psychological (if necessary) and educational assessments and recommendations; such an evaluation may include any other assessments as the Board may, by rule or regulation, require.

All testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(b) An initial multi-disciplinary diagnosis and evaluation based on rules developed by the Board shall be made before any such child is placed in a special education program, removed from such a program and placed in a regular school program, transferred from one type of special education program to another, removed from a school program for placement in a nonschool program, or otherwise tracked, classified, or treated as a child with special needs.

(c) Referral of any child shall be in writing, signed by the person requesting diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or delivered to one of the following: the child's teacher, the principal of the school to which the child is, has been or will be assigned, or the superintendent of the affected local educational agency or his designee. The local educational agency shall send a written notice to the parent or guardian describing the evaluation procedure to be followed and requesting consent for the evaluation. If the parents or guardian consent, the diagnosis and evaluation may be undertaken; if they do not, the local educational agency may obtain a due process hearing pursuant to G.S. 115C-116 on the failure of the parent or guardian to consent.

The local educational agency shall provide or cause to be provided, as soon as possible after receiving consent for evaluation, a diagnosis and evaluation appropriate to the needs of the child unless the parents or guardian have objected to such evaluation. If at the conclusion of the

evaluation, the child is determined to be a child with special needs, the local educational agency shall within 30 calendar days convene an individualized education program committee. The purpose of the meeting shall be to propose the special education and related services for the child. An interpretation of the multi-disciplinary diagnosis and evaluation will be made to the parent or guardian during the meeting. The proposal shall set forth the specific benefits expected from such a program, a method for monitoring the benefits, and a statement regarding conditions which will be considered indicative of the child's readiness for participation in regular classes.

After an initial referral is made, the provision of special education and related services shall be implemented within 90 calendar days to eligible students, unless the parents or guardian refuse to consent to evaluation or placement or the parent or local educational agency requests a due process hearing.

Within 12 months after placement in a special education program, and at least annually thereafter, those people responsible for developing the child's individualized education program, ~~group educational program for the academically gifted,~~ or educational program for the pregnant, shall review the child's progress and, on the basis of previously stated expected benefits, decide whether to continue or discontinue the placement or program. If the review indicates that the placement or program does not benefit the child, the appropriate reassignment or change in the prescribed program shall be recommended to the parents or guardian.

The local educational agency shall keep a complete written record of all diagnostic and evaluation procedures attempted, their results, the conclusions reached, and the proposals made.

(d) The local educational agency shall furnish the results, findings, and proposals, as described in the individualized education program ~~or group educational program~~ based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication, prior to the parent or guardian giving consent for initial placement in special education and related services. Prior notice will be given to the parents or guardian by the local educational agency before any change in placement.

A reevaluation must be completed at least every three years to determine the appropriateness of the child's continuing to receive special education and related services: ~~Provided, that a reevaluation for an academically gifted child shall be completed within three years of initial evaluation for a child who has been identified as academically gifted prior to the second semester of the third grade. For a child who is identified as academically gifted during the second semester of the third grade or thereafter, no reevaluation is required.~~ services.

(e) Each local educational agency shall make and keep current a list of all children evaluated and diagnosed pursuant to this section who are found to have special needs and of all children who are receiving home, hospital, institutional or other special education services, including those being educated within the regular classroom setting or in other special education programs.

(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the ~~academically gifted and pregnant children, and group educational programs prescribed in subsection (g) of this section for the academically gifted children,~~ and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Human Resources, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent.

~~(g) Each local educational agency shall prepare group educational programs for the academically gifted children. The State Board of Education shall promulgate rules and regulations specifically to address the preparation of these group educational programs, which rules and regulations shall include specific grouping standards and specific program standards, and shall also include standards for ensuring that the individual educational needs of each child within the group are addressed.~~

(h) Each local educational agency shall prepare educational programs for the pregnant children. The State Board of Education shall promulgate rules and regulations specifically to address the preparation of these educational programs, which rules and regulations shall include specific standards for ensuring that the individual educational needs of each child are addressed."

(f) Chapter 115C of the General Statutes is amended by adding a new Article 9B to read:

"ARTICLE 9B.

"Academically or Intellectually Gifted Students.

"§ 115C-150.5. *Academically or intellectually gifted students.*

The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high performance capability in intellectual areas, specific academic fields, or in both intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated

educational services beyond those ordinarily provided by the regular educational program. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor.

"§ 115C-150.6. State Board of Education responsibilities.

In order to implement this Article, the State Board of Education shall:

- (1) Develop and disseminate guidelines for developing local plans under G.S. 115C-150.7(a). These guidelines should address identification procedures, differentiated curriculum, integrated services, staff development, program evaluation methods, and any other information the State Board considers necessary or appropriate.
- (2) Provide ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-150.7.

"§ 115C-150.7. Local plans.

(a) Each local board of education shall develop a local plan designed to identify and establish a procedure for providing appropriate educational services to each academically or intellectually gifted student. The board shall include parents, the school community, representatives of the community, and others in the development of this plan. The plan may be developed by or in conjunction with other committees.

(b) Each plan shall include the following components:

- (1) Screening, identification, and placement procedures that allow for the identification of specific educational needs and for the assignment of academically or intellectually gifted students to appropriate services.
- (2) A clear statement of the program to be offered that includes different types of services provided in a variety of settings to meet the diversity of identified academically or intellectually gifted students.
- (3) Measurable objectives for the various services that align with core curriculum and a method to evaluate the plan and the services offered. The evaluation shall focus on improved student performance.
- (4) Professional development clearly matched to the goals and objectives of the plan, the needs of the staff providing services to academically or intellectually gifted students, the services offered, and the curricular modifications.
- (5) A plan to involve the school community, parents, and representatives of the local community in the ongoing implementation of the local plan, monitoring of the local plan, and integration of educational services for academically or intellectually gifted students into the total school program. This should include a public information component.
- (6) The name and role description of the person responsible for implementation of the plan.
- (7) A procedure to resolve disagreements between parents or guardians and the local school administrative unit when a child is

not identified as an academically or intellectually gifted student or concerning the appropriateness of services offered to the academically or intellectually gifted student.

- (8) Any other information the local board considers necessary or appropriate to implement this Article or to improve the educational performance of academically or intellectually gifted students.

(c) Upon its approval of the plan developed under this section, the local board shall submit the plan to the State Board of Education for its review and comments. The local board shall consider the comments it receives from the State Board before it implements the plan.

(d) A plan shall remain in effect for no more than three years; however, the local board may amend the plan as often as it considers necessary or appropriate. Any changes to a plan shall be submitted to the State Board of Education for its review and comments. The local board shall consider the State Board's comments before it implements the changes.

"§ 115C-150.8. Review of Disagreements.

In the event that the procedure developed under G.S. 115C-150.7(b)(7) fails to resolve a disagreement, the parent or guardian may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes. The scope of review shall be limited to (i) whether the local school administrative unit improperly failed to identify the child as an academically or intellectually gifted student, or (ii) whether the local plan developed under G.S. 115C-150.7 has been implemented appropriately with regard to the child. Following the hearing, the administrative law judge shall make a decision that contains findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final, is binding on the parties, and is not subject to further review under Article 4 of Chapter 150B of the General Statutes."

(g) Funding allotments in the Public School Fund shall be allocated as follows:

Existing Funding Allotment

Exceptional Children.

New Funding Allotments

- (1) Children With Special Needs.
- (2) Academically or Intellectually Gifted Students.

(h) G.S. 115C-105.21A(b) is amended by adding a new subdivision to read:

- "(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; (iii) for children with special needs; or (iv) in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7."

(i) Effective July 1, 1997, G.S. 115C-105.21A(b)(8) reads as rewritten:

"(8) Funds allocated for academically or intellectually gifted students may be used only (i) for academically or intellectually gifted students; (ii) to implement the plan developed under G.S. 115C-150.7; ~~(iii) for children with special needs; or (iv) or (iii)~~ in accordance with an accepted school improvement plan, for any purpose so long as that school demonstrates it is providing appropriate services to academically or intellectually gifted students assigned to that school in accordance with the local plan developed under G.S. 115C-150.7."

(j) G.S. 115C-105.21A(b)(4) reads as rewritten:

"(4) Funds allocated for ~~exceptional children and funds~~ children with special needs may be transferred only for academically or intellectually gifted students. Funds allocated for driver's education shall not be transferred."

(k) Effective July 1, 1997, G.S. 115C-105.21A(b)(4) reads as rewritten:

"(4) Funds allocated for children with special needs ~~may be transferred only for academically or intellectually gifted students.~~ Funds and funds allocated for driver's education shall not be transferred."

(l) The State Board of Education shall establish deadlines for local school administrative units to implement the local plans developed under G.S. 115C-150.7. All local school administrative units shall begin implementation of their local plans by the beginning of the 1998-99 school year.

(m) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 15, 1996, and by December 15, 1998, on the implementation of this section.

Requested by: Representatives Holmes, Creech, Esposito, Senators Winner, Plexico, Little, Conder

SCHOOL BOND ACT TECHNICAL CORRECTIONS

Sec. 18.25. (a) Section 4 of Chapter 631 of the 1995 Session Laws reads as rewritten:

"Sec. 4. Authorization of Bonds and Notes. -- Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Public School Building Bonds in the election held as provided in this act, the State Treasurer is authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated 'State of North Carolina Public School Building Bonds', with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in the aggregate principal amount not exceeding one billion eight hundred million dollars (\$1,800,000,000) for the purposes authorized in this act. The principal amounts of bonds or notes issued in any 12-month period shall not exceed four hundred fifty million dollars (\$450,000,000). In determining whether this limit has been reached, the issuance of a note or bond to pay an outstanding note or bond is not considered an issuance."

(b) Section 6(d) of Chapter 631 of the 1995 Session Laws reads as rewritten:

"(d) Match. -- A county is not required to match bond proceeds allocated under subsection (b) of this section. A county is not required to match the Low-Wealth Allocation of bond proceeds under subsection (c) of this section. A county must match both the ADM Allocation and the Growth Allocation of bond proceeds under subsection (c) of this section. These two allocations must be matched at the rate of matching funds equal to three cents (3¢) times the county's ability to pay rank for every one dollar (\$1.00) of allocated bond proceeds. A county's ability to pay rank is its rank in the ranking of counties from lowest to highest county wealth as a percentage of State average wealth made by the State Board of Education for the 1995-96 fiscal year pursuant to Section 17.1 of Chapter 507 of the 1995 Session Laws. The match requirement may be satisfied by non-State expenditures for public school facilities made on or after January 1, 1992. ~~A non-State expenditure has been made for the purpose of the match if funds, including funds expended for debt service, have been budgeted, earmarked, or committed for the general purpose of public school facilities. If a debt has been authorized or incurred since January 1, 1992, for the general purpose of public school facilities, then the face amount of the debt shall be considered as a non-State expenditure for public school facilities for the purpose of the match.~~ Non-state expenditures are defined as follows:

- (1) With respect to debt incurred for public school facilities before January 1, 1992, non-State expenditures include amounts expended on or after January 1, 1992, for debt service for the debt.
- (2) With respect to debt authorized or incurred for public school facilities on or after January 1, 1992, non-State expenditures include only the face amount of the debt.
- (3) With respect to expenditures other than for debt service, non-State expenditures include funds budgeted, earmarked, or committed on or after January 1, 1992, for the purpose of public school facilities.

As counties satisfy the match requirements of this section, they shall document the extent to which they have done so in periodic reports to the State Board of Education. These reports shall include any information and documentation required by the State Board of Education. The State Board of Education shall certify to the State Treasurer from time to time the extent to which the match requirements of this section have been met with respect to each county; this certification shall be binding and conclusive. Bond proceeds shall be distributed for expenditure only as, and to the extent, the matching requirements of this section are satisfied, as certified by the State Board of Education. The State Board of Education shall also require counties to report annually on the impact of funds provided under this act on the property tax rate for that year. These reports shall be public documents and shall be furnished to any citizen upon request."

(c) This section is effective upon ratification.

Requested by: Senators Winner, Plexico, Davis, Little, Conder,
Representatives Grady, Preston, Cummings

REPEAL LOCAL SCHOOL PAY DATES

Sec. 18.26. (a) Section 2 of Chapter 106 of the 1991 Session Laws is repealed.

(b) Chapter 90 of the 1995 Session Laws is repealed.

(c) Section 144 of Chapter 321 of the 1993 Session Laws is repealed.

(d) Chapter 120 of the 1995 Session Laws is repealed.

(e) Chapter 770 of the 1991 Session Laws is repealed.

(f) Section 19.22 of Chapter 769 of the 1993 Session Laws, as amended by Chapter 12 of the 1995 Session Laws, is repealed.

(g) Sections 19.18 and 19.21 of Chapter 769 of the 1993 Session Laws are repealed.

(h) Chapter 399 of the 1989 Session Laws, as amended by Chapter 820 of the 1989 Session Laws, is repealed.

(i) Chapter 995 of the 1991 Session Laws is repealed.

(j) Section 53 of Chapter 561 of the 1993 Session Laws is repealed.

(k) Section 8 of Chapter 246 of the 1991 Session Laws is repealed.

(l) Chapter 835 of the 1991 Session Laws is repealed.

(m) Section 143.1 of Chapter 321 of the 1993 Session Laws, as amended by Section 19.19 of Chapter 769 of the 1993 Session Laws is repealed.

(n) The pay dates for all employees of the Kings Mountain Local School Administrative Unit and the pay date for all employees of the local boards of education of Alleghany County, Brunswick County, Caldwell County, Charlotte-Mecklenburg County, Cherokee County, Dare County, Haywood County, Henderson County, New Hanover County, Pitt County, Scotland County, and Watauga County shall be established in accordance with the provisions of Chapter 115C of the General Statutes.

Requested by: Representatives Eddins, Grady, Preston, Cummings, Senators Winner, Plexico, Little, Conder,

SCHOOL BUDGETS AND SCHOOL IMPROVEMENT PLANS MADE AVAILABLE

Sec. 18.27. G.S. 115C-288 is amended by adding the following new subsection to read:

"(h) To Make Available School Budgets and School Improvement Plans. -- The principal shall maintain a copy of the school's current budget and school improvement plan, including any amendments to the plan, and shall allow parents of children in the school and other interested persons to review and obtain such documents in accordance with Chapter 132 of the General Statutes."

Requested by: Representatives Preston, Grady, Cummings. Senators Winner, Plexico, Little, Conder

ALTERNATIVE LEARNING PROGRAM/GUIDELINES, TECHNICAL ASSISTANCE, EVALUATION

Sec. 18.28. (a) G.S. 115C-12 is amended by adding a new subdivision to read:

"(24) Duty to Develop Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs,

and Evaluate Programs. -- The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee, beginning in December 1996, on the results of this evaluation.

(b) The first priority for the use of the expansion budget funds appropriated in this act to the Alternative Schools/At-Risk Student allotment shall be to enable every high school in North Carolina to have a uniformed school resource officer. If a local board of education determines after conferring with parents, teachers, and students at a high school that the school does not need a uniformed school resource officer, the local board may use these funds for other purposes. Local boards of education may use any remaining funds for other programs to ensure school safety, prevent violence, and provide alternative learning programs.

Local boards of education may use funds from the Alternative Schools/At-Risk Student allotment to form partnerships with the Cities In Schools Program or to contract with the Cities In Schools Program for services.

(c) The State Board of Education shall modify the accounting system for State Aid to Local School Administrative Units so that it can account for State funds expended for school resource officers in each local school administrative unit.

(d) Local boards of education are encouraged not to use these State funds in the Alternative Schools/At-Risk Student allotment to supplant local funds.

(e) The State Board of Education may use up to two hundred thousand dollars (\$200,000) of the funds in the Alternative Schools/At-Risk Student allotment to implement G.S. 115C-12(24), as enacted by subsection (a) of this section.

Requested by: Representatives Grady, Preston, Cummings, Senators Winner, Plexico, Little, Conder,

PUBLIC SCHOOL TEACHERS/LIABILITY PROTECTION

Sec. 18.29. Of the funds appropriated to the Department of Public Education for the 1996-97 fiscal year, an amount equal to ten dollars (\$10.00) for each teacher paid from the General Fund shall be allocated by the State Board of Education to each local school administrative unit to provide comprehensive general liability protection, including coverage for errors and omissions, for teachers employed by the local school administrative unit for the 1996-97 school year.

Requested by: Representatives Crawford, Creech, Holmes, Esposito, Senators Plyler, Odom, Perdue

MODEL TEACHER EDUCATION CONSORTIUM

Sec. 18.30. Of the funds appropriated to the State Board of Education for the 1996-97 fiscal year for State Aid to Local School Administrative Units, the Board may use up to one hundred thousand dollars (\$100,000) for the operation of a Model Teacher Education Consortium.

PART 19. DEPARTMENT OF TRANSPORTATION

Requested by: Representatives Barbee, Bowie, Senator Hoyle
USE OF FUNDS RESULTING FROM THE ELIMINATION OF POSITIONS IN DIVISION OF MOTOR VEHICLES

Sec. 19. Funds in the amount of one hundred thirty-five thousand three hundred eighty-nine dollars (\$135,389) realized from the elimination of 11 positions in the Division of Motor Vehicles during the 1996-97 fiscal year shall be placed in a reserve and shall be used only to support the implementation of the State Titling and Registration System. Funds remaining in the reserve at the end of the 1996-97 fiscal year shall revert to the Highway Fund.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
DEPARTMENT OF TRANSPORTATION REPORT ON REORGANIZATION OF DIVISION OF MOTOR VEHICLES

Sec. 19.1. The Department of Transportation shall report to the Joint Legislative Transportation Oversight Committee by December 15, 1996, concerning how it will implement the recommendations for the restructuring of the Division of Motor Vehicles through the elimination of positions, consolidation of offices and functions, and the transfer of functions within and from the Division, which were contained in the performance audit of the Division of Motor Vehicles presented to the Joint Legislative Commission on Governmental Operations in May 1996. This report shall discuss both short-term and long-term managerial actions necessary to implement the recommendations and contain detailed budgetary analyses of the short-term and long-term effects of these actions. This report shall also describe how the various proposals fit in a long-range plan for the modernization of the Division of Motor Vehicles and the functions it performs.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
DEPARTMENT OF TRANSPORTATION REPORTS TO THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE

Sec. 19.2. The Department of Transportation shall make the following reports to the Joint Legislative Transportation Oversight Committee by the dates specified:

- (1) By November 1, 1996, the Department shall report on any changes needed to be made to the vehicle salvage laws to minimize the number of salvage inspections without compromising the integrity of the salvage process. This report shall address how reductions in dedicated salvage inspection positions shall be made under the proposed system.
- (2) By October 1, 1996, the Department shall provide plans for the study of the following issues, including a schedule for completion of the studies:
 - a. How the process by which licenses are modified, revoked, and suspended can be simplified.
 - b. How touch-tone technology and credit cards can be used in the motor vehicle registration process.
 - c. How credit cards can be used to increase customer payment options.
 - d. How collision reports can be entered directly into an automated system database by law enforcement officers.
- (3) By December 1, 1996, the Department shall report how computer software used to register motor carriers under the International Registration Plan can be reconfigured so that it can be used more efficiently by staff and customers.
- (4) By November 1, 1996, the Department shall:
 - a. Develop a formula to determine the number, location, and staffing of drivers license field offices within the State.
 - b. Use this formula to develop a five-year plan for changes in the number and sizes of drivers license field offices that recognizes the need for the development of larger, multi-functional drivers license offices that provide a wider range of services at centralized locations and to provide a plan for the renovation of existing drivers license field offices that will be retained.
- (5) By December 1, 1996, the Department shall report on how it will maintain technical support for the vehicle registration and drivers license data systems for the 1997-99 biennium. This report shall estimate staffing needs for technical support in each year, address whether and how contract personnel will be used, and determine the feasibility of using more permanent personnel instead of contractors.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
DIVISION OF MOTOR VEHICLES ENFORCEMENT DUTIES

Sec. 19.3. G.S. 20-4 reads as rewritten:

~~"§ 20-4. Clarification of conflicts as to transfer of functions. Enforcement duties of the Division.~~

~~In the event that there shall arise any conflict as to the transfer of any functions from the Department of Revenue to the Division of Motor~~

~~Vehicles, the Governor of the State is hereby authorized to issue an executive order clarifying and making certain the issue thus arising.~~

(a) Primary Duty. -- The primary enforcement duty of the Division is the enforcement of the vehicle weight restrictions set forth in G.S. 20-118. In performing this duty, the Division shall make maximum effective use of permanent weigh stations and portable scales.

(b) Secondary Duties. -- The secondary enforcement duties of the Division are as follows and are listed in the order of importance:

(1) Enforcement of the motor carrier safety regulations.

(2) Enforcement of the emissions inspection program.

(3) Inspection of salvage vehicles.

(4) Providing security at rest areas.

(5) Other duties set out in this Chapter.

(c) Restriction. -- The Division shall not undertake an enforcement duty that is not listed in this section unless a law specifically authorizes the Division to do so or the duty is undertaken as a condition of receiving federal funds."

Requested by: Representatives Barbee, Bowie, Senator Hoyle
DEPARTMENT OF TRANSPORTATION--CASH FLOW CONTRACT FUNDING

Sec. 19.4. (a) G.S. 136-176(d) reads as rewritten:

"(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the ~~biennium~~ two bienniums following the year in which the contract is let."

(b) G.S. 143-28.1 reads as rewritten:

"§ 143-28.1. *Highway Fund appropriation.*

Notwithstanding any other provisions of this Article, the appropriations made from the Highway Fund for highway construction and maintenance are subject to the following provisions.

(1) Cash Flow Funding for Highway Construction and Maintenance.
 -- Highway maintenance and construction funds shall be budgeted, expended and accounted for on a 'cash flow' basis. Pursuant to this end, highway maintenance and construction contracts shall be planned and limited so payments due at any time will not exceed the cash available to pay them.

(2) Appropriations are for Payments and Contract Commitments to be Made in the Appropriation Fiscal Year. -- The appropriations provided for by the Appropriations Act for highway maintenance and construction are for maximum payments estimated to be made during the appropriation fiscal year and for maximum contracting authority for future years. Highway maintenance and construction contracts shall be scheduled so that the total contract payments and other expenditures charged to projects in the fiscal year for each highway maintenance and construction appropriation item will not exceed the current appropriations provided by the General Assembly and unspent prior appropriations made by the General Assembly for the particular appropriation item.

- (3) Payments Subject to Availability of Funds -- Retainage Fully Funded -- 5% Cash Balance Required. -- The annual appropriations for highway maintenance and construction provided for by the Appropriations Act shall be expended only to the extent that sufficient funds are available in the Highway Fund. The Department of Transportation shall fully fund retainage from maintenance and construction contracts in the year in which the work is performed, and in addition shall maintain an available cash balance at the end of each month equal to at least five percent (5%) of the unpaid balance of the total maintenance and construction contract obligations. In the event this cash position is not maintained, no further construction and maintenance contract commitments shall be entered into until the cash balance has been regained. For the purposes of awarding contracts involving federal-aid, any amount due from the federal government and the Highway Bond Fund as a result of unreimbursed expenditures may be considered as cash for the purposes of this provision.
- (4) Anticipation of Revenues. -- In awarding State highway construction and maintenance contracts requiring payments beyond a biennium, the Director of the Budget may anticipate revenues as authorized and certified by the General Assembly, to continue contract payments for up to seventy-five percent (75%) of the revenues which are estimated for the first fiscal year of the succeeding biennium and which are not required for other budget items. Up to fifty percent (50%) of the revenues not required for other budget items may be anticipated for the second and ~~subsequent~~ fiscal years' year of the succeeding biennium's contract payments. Up to forty percent (40%) of the revenues not required for other budget items may be anticipated for the first year of the second succeeding biennium and up to twenty percent (20%) of the revenues not required for other budget items may be anticipated for the second year of the second succeeding biennium.
- (5) Amounts Obligated -- Payments Subject to the Availability of Funds -- Termination of Contracts. -- Highway maintenance and construction appropriations may be obligated in the amount of allotments made to the Department of Transportation by the Office of State Budget and Management for the estimated payments for maintenance and construction contract work to be performed in the appropriation fiscal year. The allotments shall be multi-year allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subdivision (2) above. Payment for highway maintenance and construction work performed pursuant to contract in any fiscal year other than the current fiscal year will be subject to appropriations by the General Assembly. Highway maintenance and construction contracts shall contain a schedule of estimated completion progress and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any

highway maintenance or construction contract and any highway maintenance or construction contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

- (6) Provision Incorporated in Contracts. -- The provisions of subdivision (5) of this section shall be incorporated verbatim in all highway construction and maintenance contracts.
- (7) Existing Contracts Are Not Affected. -- The provisions of this section shall not apply to highway construction and maintenance contracts awarded by the Department of Transportation prior to July 15, 1980."

(c) The Department of Transportation shall report quarterly beginning on October 15, 1996, and then on the fifteenth of the month following the end of the fiscal quarter, to the Joint Legislative Transportation Oversight Committee on all projects to be built with funds obligated using the cash flow provisions of G.S. 143-28.1. The report shall contain a list of the projects and the amount obligated in anticipation of revenues for each year of the project.

Requested by: Representatives Barbee, Bowie, Senator Hoyle
**CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND
 APPROPRIATIONS**

Sec. 19.5. Section 18.9 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 18.9. (a) The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

For Fiscal Year 1997-98	\$1,075.6 Million \$1,089.4 Million
For Fiscal Year 1998-99	\$1,093.1 Million \$1,110.7 Million
For Fiscal Year 1999-00	\$1,146.7 Million
For Fiscal Year 2000-01	<u>\$1,174.3 Million</u>

(b) The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

For Fiscal Year 1997-98	\$ 775.8 Million \$ 788.2 Million
For Fiscal Year 1998-99	\$ 799.8 Million \$ 812.7 Million
For Fiscal Year 1999-00	\$839.3 Million
For Fiscal Year 2000-01	<u>\$867.2 Million</u> ".

Requested by: Representatives Barbee, Bowie, Senator Hoyle
RADIO ISLAND RAILROAD TRESTLE

Sec. 19.6. (a) Subsection (b) of Section 18.28 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(b) The Department of Transportation shall proceed with the planning and construction of the trestle, Project P-3100 in the 1996-2002 Transportation Improvement Program, and shall commence construction of

the trestle during calendar year 1996. The Beaufort and Morehead Railroad Company, owner of the trestle, shall be conveyed to the Department of Transportation by the North Carolina Ports Railway Commission for construction of the replacement trestle and related purposes authorized by G.S. 136-44.36. The completed bridge shall be owned by the Department of Transportation and shall be added to the State System for maintenance purposes."

(b) Notwithstanding any other provision of law, the Department of Transportation may award a contract for Project 3100 in the 1996-2002 Transportation Improvement Program on a design-build basis, using any procurement process that the Department of Transportation determines will result in maximum efficiency in constructing this project.

(c) The Department of Transportation shall file a progress report every six months beginning on December 1, 1996, with the Joint Legislative Transportation Oversight Committee on the construction of this project.

Requested by: Senators Hoyle, Little, Gulley, Representatives Bowie, Crawford

UNPAVED SECONDARY ROADS ON STATE LANDS

Sec. 19.7. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-44.7A. Submission of secondary roads construction programs to State agencies."

"When the Department of Transportation proposes to pave an unpaved secondary road that crosses land controlled by a State agency, the Department of Transportation shall obtain the approval of that State agency before paving that secondary road."

Requested by: Representatives Barbee, Bowie, Senator Hoyle

GREEN ROADS INITIATIVE

Sec. 19.8. From funds available to the Department of Transportation, the Department of Correction, and the Division of Forest Resources, Department of Environment, Health, and Natural Resources, approximately 700 acres of land shall be planted with trees during the 1996-97 fiscal year as the start of a "Green Roads Initiative" of reforestation along highways across the State.

The Department of Transportation, in conjunction with the Department of Environment, Health, and Natural Resources, shall identify the locations where the reforestation can be accomplished through the use of seedlings provided by the Division of Forest Resources and prisoners allocated to the Department of Transportation by the Department of Correction.

To the extent possible, the acreage identified for reforestation shall be equally distributed in the 14 transportation engineering divisions.

The goals of the initiative are to plant trees that will provide additional natural habitat for birds and other wildlife, to reduce expensive roadside maintenance by reducing the acreage requiring frequent mowing of grasses, to beautify the State's highways, and to maintain safety for the motoring public.

The Department of Transportation, the Department of Environment, Health, and Natural Resources, and the Department of Correction shall jointly report to the Joint Legislative Transportation Oversight Committee by December 31, 1996, on progress in implementing the Green Roads Initiative.

Requested by: Senators Hoyle, Gulley, Representatives Bowie, Crawford
**DEPARTMENT OF TRANSPORTATION LAND SALES PROCEEDS
 USED FOR CAPITAL IMPROVEMENTS**

Sec. 19.9. (a) Funds received by the Department of Transportation from the sale of Department-owned land (not right-of-way property) during the 1995-96 fiscal year in the amount of twenty-four thousand three hundred ninety-three dollars (\$24,393) shall be used to supplement appropriations for Department of Transportation capital outlays funded in this act, in the priority order established by this act.

(b) This section is effective June 30, 1996.

Requested by: Senators Hoyle, Gulley, Representatives Bowie, Crawford
**CLARIFICATION OF POLICY RELATED TO MATERIALS THAT MAY
 BE DISPLAYED AT WELCOME CENTERS**

Sec. 19.10. (a) G.S. 136-18(9) reads as rewritten:

"(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except (i) for materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense."

(b) G.S. 136-89.56 reads as rewritten:

"§ 136-89.56. *Commercial enterprises.*

No commercial enterprises or activities shall be authorized or conducted by the Department of Transportation, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this Article, except for vending for:

(1) Materials displayed at welcome centers which shall be directly related to travel, accommodations, tourist-related activities, tourist-

related services, and attractions. The Department of Transportation shall issue rules regulating the display of these materials. These materials may contain advertisements for real estate; and

- (2) Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Department of Transportation shall permit access to service or frontage roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this Article, at points which, in the opinion of the Department of Transportation, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Department of Transportation.

The location of fuel and other service facilities may be indicated to the users of the controlled access facilities by appropriate logos placed on signs owned, controlled, and erected by the Department of Transportation. The owners, operators or lessees of fuel and other service facilities who wish to place a logo identifying their business or service on a sign shall furnish a logo meeting the size, style and specifications determined by the Department of Transportation and shall pay the Department for the costs of initial installation and subsequent maintenance. The fees for logo sign installation and maintenance shall be set by the Board of Transportation based on cost."

Requested by: Representatives McLaughlin, Bowie, Crawford, Senators Hoyle, Gulley

VISITOR CENTERS

Sec. 19.11. (a) The Department of Transportation, with the assistance of the Department of Commerce, shall collect the necessary data to accurately estimate the extent and type of use the public makes of the visitor centers on the State highway system. The Department shall use this data to develop a formula for allocating State resources for the funding of these visitor centers.

(b) The Department shall study and make a recommendation to the General Assembly about requiring a local match for funds appropriated by the State for the operations of local visitor centers.

(c) Until the Department reports to the General Assembly no new visitor centers shall be approved for addition to the State highway system.

(d) The Department shall submit the report required by this section no later than December 31, 1996, to the Joint Legislative Transportation Oversight Committee.

(e) G.S. 20-79.7(c)(2), as amended by Section 18.17 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(2) From the funds remaining in the Special Registration Plate Account after the deductions in accordance with subdivision (1) of this subsection, there is annually appropriated from the Special Registration Plate Account the sum of five hundred twenty-five thousand dollars (\$525,000) ~~for the 1995-96 fiscal year~~ to provide operating assistance for the Visitor and Welcome Centers:

- a. on U.S. Highway 17 in Camden County, (\$75,000);
- b. on U.S. Highway 17 in Brunswick County, (\$75,000);
- c. on U.S. Highway 441 in Macon County, (\$75,000);
- d. in the Town of Boone, Watauga County, (\$75,000);
- e. on U.S. Highway 29 in Caswell County, (\$75,000);
- f. on U.S. Highway 70 in Carteret County, (\$75,000); and
- g. on U.S. Highway 64 in Tyrrell County, (\$75,000)."

Requested by: Representatives Bowie, Crawford, Senators Hoyle, Gulley
RAILROAD DIVIDEND USES

Sec. 19.12. G.S. 136-16.6 reads as rewritten:

"§ 136-16.6. *Continuing rail appropriations.*

(a) There is annually ~~appropriated~~ credited to the Highway Fund one hundred percent (100%) of the annual dividends received ~~in the prior fiscal year~~ by the State from its ownership of stock in the North Carolina Railroad Company ~~to the Highway Fund~~ for use by the Department of Transportation for railroad purposes.

(b) The Department of Transportation shall include in its annual budget the purposes for which the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be used.

These purposes may include the following project types to be included in the annual Transportation Improvement Program:

- (1) Track and signal improvements for passenger service.
- (2) Rail passenger stations and multimodal transportation centers.
- (3) Grade crossing protection, elimination, and hazard removal.
- (4) Rail rolling stock cars and locomotives.
- (5) Rail rehabilitation.
- (6) Industrial rail access.

The Department of Transportation shall use these funds to supplement but not supplant funds allocated for projects approved as part of the Transportation Improvement Program.

(c) There is annually appropriated to the Department of Transportation for railroad purposes one hundred percent (100%) of the funds credited to the Highway Fund pursuant to subsection (a) of this section."

Requested by: Representatives Bowie, Crawford, Senators Hoyle, Gulley
RAIL TRAVEL ENHANCEMENT FUNDS

Sec. 19.13. (a) The Department of Transportation may spend up to three million dollars (\$3,000,000) during the 1996-97 fiscal year for rail travel enhancement. Up to one million seven hundred thousand dollars

(\$1,700,000) of these funds may come from funds appropriated to the Highway Fund and up to one million three hundred thousand dollars (\$1,300,000) may come from the Highway Fund credit balance remaining as of June 30, 1996. Any dividends received by the State during the 1996-97 fiscal year from its ownership of stock in the North Carolina Railroad Company shall be used to reimburse the Highway Fund for funds spent pursuant to this section.

(b) In future years rail travel enhancement funds shall come from funds appropriated pursuant to G.S. 136-16.6(c) or G.S. 136-44.20(d).

(c) This section becomes effective June 30, 1996.

Requested by: Representatives Bowie, Crawford, Senators Hoyle, Gulley
DRIVERS EDUCATION FUNDING AND STUDY

Sec. 19.14. (a) From funds appropriated by this act to the Department of Transportation, the Department shall pay for the increased costs for drivers education due to the projected increase in average daily membership in the ninth grade drivers education program.

(b) The Joint Legislative Transportation Oversight Committee shall conduct a comprehensive study of the funding of drivers education by the Department of Transportation from the Highway Fund.

The Committee shall include, as part of the study which may consider other aspects, a consideration of:

- (1) The method of accounting for the expenditure of Highway Fund monies by the Department of Public Instruction and the local school administrative units for drivers education;
- (2) The method of reporting on these expenditures to the Office of State Budget and Management, the Department of Transportation, and to the General Assembly;
- (3) An analysis of which school systems have or have not contracted with nongovernmental entities for providing drivers education; and
- (4) A recommendation for the funding of drivers education from a dedicated funding source that provides for changes in average daily membership in the served student population.

The Joint Legislative Transportation Oversight Committee shall report the results of this study to the 1997 Session of the General Assembly.

PART 20. DEPARTMENT OF CORRECTION

Requested by: Representatives Holmes, Creech, Esposito, Senator Ballance
USE OF FACILITIES CLOSED UNDER GPAC

Sec. 20.1. In conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located or any private for-profit or nonprofit firm about the possibility of converting that unit to other use. Consistent with existing law, the Department may provide for the lease of any of these units to counties, municipalities, or private firms wishing to convert them to other use. The Department of Correction may also consider

converting some of the units recommended for closing from medium security to minimum security, where that conversion would be cost-effective.

The Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

REIMBURSEMENT TO COUNTIES FOR HOUSING COSTS OF INMATES AWAITING TRANSFER TO STATE PRISON SYSTEM

Sec. 20.2. (a) G.S. 148-29 reads as rewritten:

"§ 148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit; ~~State not liable for maintenance expenses until convict received.~~ affidavit.

The sheriff having in charge any prisoner to be taken to the ~~Central Prison at Raleigh~~ State prison system shall send ~~him~~ the prisoner to the ~~Central Prison~~ custody of the Department of Correction within five days after the adjournment of the court at which he was sentenced, sentencing and the disposal of all pending charges against the prisoner, if no appeal has been taken. Beginning on the sixth day after sentencing and disposal of all pending charges against the prisoner and continuing through the day the prisoner is received by the Division of Prisons, the Department of Correction shall pay the county a standard sum set by the General Assembly in its appropriations acts for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical services to the prisoner awaiting transfer to the State prison system.

The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by him as true copies of those on file in his office. ~~The State is not liable for the expenses of maintaining convicts until they have been received by the State Department of Correction authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception."~~

(b) The Department of Correction may use funds available for the 1995-96 fiscal year to pay the sum of fourteen dollars and fifty cents (\$14.50) per day as reimbursement to counties for the cost of housing inmates convicted and awaiting transfer to the State prison system, as provided in G.S. 148-29.

(c) Of the funds appropriated to the Department of Correction for the 1996-97 fiscal year, the Department may use up to fourteen million six hundred thousand dollars (\$14,600,000) to raise the per diem reimbursement to counties from fourteen dollars and fifty cents (\$14.50) per day to forty dollars (\$40.00) per day for the cost of housing inmates convicted and awaiting transfer to the State prison system, as provided in G.S. 148-29. Counties shall send invoices to the Department no more than once monthly, and the Department shall make reimbursement within 30 days of receipt of the invoice.

(d) Subsections (a) and (b) of this section become effective January 1, 1996.

Requested by: Representatives Justus, Thompson, Senator Ballance
**COMBINATION OF PAROLE PROBATION FIELD SERVICES AND
PAROLE PRE- AND POST-RELEASE SERVICES PROGRAMS FOR
BUDGETING PURPOSES**

Sec. 20.3. Notwithstanding any other provision of law, the Department of Correction may combine Parole Probation Field Services and Parole Pre- and Post-Release Services programs for budgeting purposes in order to reflect the actual operation in the field, since officers from each program are responsible for both parole and probation cases.

Requested by: Representatives Justus, Thompson, Senator Ballance
**MODIFICATION OF FUNDING FORMULA FROM THE NORTH
CAROLINA STATE-COUNTY CRIMINAL JUSTICE PARTNERSHIP
ACT**

Sec. 20.4. Notwithstanding the funding formula set forth in G.S. 143B-273.15, grants made through the North Carolina State-County Criminal Justice Partnership Act for the 1996-97 fiscal year shall be distributed to the counties as specified in G.S. 143B-273.15(2) only, and not as discretionary funds. Appropriations not claimed or expended by counties during the 1996-97 fiscal year shall be distributed pursuant to G.S. 143B-273.15(1).

Requested by: Representatives Justus, Thompson, Senator Ballance
DART AFTERCARE FUNDS SHALL NOT REVERT

Sec. 20.5. (a) Funds appropriated in this act to the Department of Correction for the 1995-96 fiscal year for a Drug Alcohol Recovery Treatment (DART) aftercare program shall not revert at the end of the fiscal year but shall remain available to the Department during the 1996-97 fiscal year and be used to contract for up to three pilot programs statewide to provide aftercare services, including counseling and job referral services, for DART DWI offenders and other offenders who have completed a DART program in the Division of Prisons.

The Department of Correction shall report on the pilot programs to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by March 1, 1997. The report shall include information on the number of clients served, the quality of services, the cost-effectiveness of the services, and the benefits of the programs to offenders.

(b) This section becomes effective June 30, 1996.

Requested by: Representatives Justus, Thompson, Senator Ballance
**DEPARTMENT OF CORRECTION/DEPARTMENT OF HUMAN
RESOURCES JOINT PLAN/RESERVE FOR SUBSTANCE ABUSE
TREATMENT PILOT PROGRAM FOR PAROLEES AND
PROBATIONERS SHALL NOT REVERT**

Sec. 20.6. (a) The balance of the five hundred eighty-three thousand dollars (\$583,000) appropriated in Chapter 24 of the Session Laws of the 1994 Extra Session to the Department of Correction for the 1994-95 fiscal year and carried forward to the 1995-96 fiscal year by Section 19.8 of

Chapter 507 of the 1995 Session Laws for an intensive out-patient substance abuse treatment pilot program for parolees and probationers with serious substance abuse histories shall not revert at the end of the fiscal year but shall remain available to the Department during the 1996-97 fiscal year to be used for the operation and evaluation of the Department of Correction/Department of Human Resources joint substance abuse program, the Drug Alcohol Recovery Treatment (DART) aftercare pilot program, and other prison-based or community corrections substance abuse programs in the Department of Correction, as determined by the Secretary of Correction.

The Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the use of these funds and any benefits realized. The Department of Human Resources shall participate in these reports as they relate to the joint project.

(b) This section becomes effective June 30, 1996.

Requested by: Representatives Holmes, Creech, Esposito, Senators Ballance, Odom

SALARY CONTINUATION BENEFITS FOR ALL DEPARTMENT OF CORRECTION EMPLOYEES INJURED BY DELIBERATE ACT OR WHILE PERFORMING SUPERVISORY DUTIES

Sec. 20.7. (a) G.S. 143-166.13(b) reads as rewritten:

"(b) The following persons are entitled to benefits under this Article regardless of whether they are subject to the Criminal Justice Training and Standards Act:

(1) Driver License Examiners injured by accident arising out of and in the course of giving a road test, Division of Motor Vehicles, Department of ~~Transportation~~ Transportation;

(2) Employees of the Department of Correction injured by a direct and deliberate act of an offender supervised by the Department or while performing supervisory duties over offenders which place the employees at risk of such injury."

(b) This section applies to injuries occurring on or after the effective date of this act.

Requested by: Senator Ballance, Representatives Justus, Thompson

REPORT ON WOMEN AT RISK

Sec. 20.8. The Women at Risk Program shall report by December 1, 1996, and by May 1, 1997, to the Joint Legislative Commission on Governmental Operations, the Chairs of the House and Senate Appropriations Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the expenditure of State appropriations and on the effectiveness of the program, including information on the number of clients served, the number of clients who have had their probation revoked, and the number of clients who have successfully completed the program.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

FEDERAL MATCHING FUNDS

Sec. 20.9. Section 27.10A of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 27.10A. Appropriations made in this act for the 1995-97 biennium to the Office of State Construction of the Department of Administration for construction of new prison beds, excluding the sum of seven million five hundred thousand dollars (\$7,500,000) to be used for the design and preliminary site work, are to match federal funds available for prison construction in the 1995 or 1996 federal fiscal year or subsequent federal fiscal years. If the federal match is not made available by January 1, 1996, these State funds shall be made available to the Office of State Construction of the Department of Administration for construction of new prison beds, segregation units, and support buildings and systems as specified in this act. Appropriations not needed or used to match federal funds may be made available for construction of new prison beds, segregation units, support buildings and systems, and other needed facilities."

The Office of State Construction shall report to the Chairs of the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the availability of federal prison construction matching funds."

Requested by: Representatives Justus, Thompson, Senator Ballance
USE OF PRISON MATCH FUNDS

Sec. 20.10. Section 27.10A1 of Chapter 507 of the 1995 Session Laws is repealed. Any funds appropriated in Chapter 507 of the 1995 Session Laws for construction of new prison beds that are not needed to construct prisons for the 1995-97 fiscal biennium shall be placed in a reserve for appropriation by the 1997 General Assembly.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

ALTERNATIVES TO OUT-OF-STATE HOUSING

Sec. 20.11. The Department of Correction shall investigate methods of housing inmates within the State rather than in out-of-state facilities, including the use of modular units and small units scheduled to be closed as a result of the recommendations made by the Government Performance Audit Committee. The Department shall report its findings and recommendations quarterly to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Correction Oversight Committee.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

HARRIET'S HOUSE FUNDS

Sec. 20.12. (a) Section 19.7 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 19.7. Of the funds appropriated to the Department of Correction, the sum of two hundred thousand dollars (\$200,000) for the 1995-96 fiscal

year and the sum of two hundred thousand dollars (\$200,000) for the 1996-97 fiscal year shall be used to support the programs of Harriet's House, a transitional home for female ex-offenders and their children. The funds may be used for program operating costs, the purchase of equipment, and the rental of real property. Harriet's House shall report quarterly to the Joint Legislative Commission on Governmental Operations on the expenditure of State appropriations and on the effectiveness of the program including information on the number of clients served and the number of clients who successfully complete the Harriet's House program."

(b) The balance of the two hundred thousand dollars (\$200,000) appropriated in Chapter 507 of the 1995 Session Laws to the Department of Correction for the 1995-96 fiscal year to support the programs at Harriet's House shall not revert at the end of the fiscal year but shall remain available to the Department during the 1996-97 fiscal year to be used for program operating costs, the purchase of equipment, and the rental of real property.

(c) This section becomes effective June 30, 1996.

Requested by: Senators Ballance, Cooper, Rand, Representatives Justus, Thompson, Kiser

CREATE A NEW FELONY OFFENSE OF ASSAULT INFLECTING SERIOUS BODILY INJURY AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, TO INCREASE THE PUNISHMENT FOR SALE OF HANDGUNS TO MINORS TO A CLASS H FELONY, AND TO INCREASE THE PUNISHMENT FOR SALE OF CONTROLLED SUBSTANCES TO PERSONS UNDER AGE SIXTEEN OR PREGNANT FEMALES TO A CLASS D FELONY

Sec. 20.13. (a) Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-32.4. Assault inflicting serious bodily injury.

Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. 'Serious bodily injury' is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization."

(b) G.S. 14-315(a1) reads as rewritten:

"(a1) Sale of Handguns. -- If a person sells, offers for sale, gives, or in any way transfers to a minor any handgun as defined in G.S. 14-269.7, the person is guilty of a ~~Class I~~ Class H felony and, in addition, shall forfeit the proceeds of any sale made in violation of this section. This section does not apply in any of the following circumstances:

- (1) The handgun is lent to a minor for temporary use if the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.
- (2) The handgun is transferred to an adult custodian pursuant to Chapter 33A of the General Statutes, and the minor does not take

possession of the handgun except that the adult custodian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

- (3) The handgun is a devise or legacy and is distributed to a parent or guardian under G.S. 28A-22-7, and the minor does not take possession of the handgun except that the parent or guardian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful."

(c) G.S. 90-95(e)(5) reads as rewritten:

"(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a ~~Class E~~ Class D felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;"

(d) This section becomes effective January 1, 1997, and applies to offenses committed on or after that date.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Odom, Rand, Cooper

EXTEND THE REGULAR PERIOD OF POST-RELEASE SUPERVISION FROM SIX TO NINE MONTHS/EXTEND THE PERIOD OF POST-RELEASE SUPERVISION TO FIVE YEARS FOR SEX OFFENDERS/PROVIDE FOR SPECIAL CONDITIONS OF POST-RELEASE SUPERVISION FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF MINORS/PROVIDE FOR MANDATORY CONDITIONS OF PROBATION FOR SEX OFFENDERS AND PERSONS CONVICTED OF OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF CHILDREN

Sec. 20.14. (a) G.S. 15A-1368.2(c) reads as rewritten:

"(c) A supervisee's period of post-release supervision shall be for a period of ~~six months~~, nine months, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5."

(b) G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. -- In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves

the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- (4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
- (5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child."

(c) G.S. 15A-1343 is amended by adding a new subsection to read:

"(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. -- As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

- (1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).
- (2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- (3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- (4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.
- (5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.
- (6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation."

(d) This section becomes effective December 1, 1996.

Requested by: Senators Ballance, Cooper, Rand, Representatives Decker, Justus, Thompson, Kiser

CLASS F FELONY OFFENSE TO ASSAULT A LAW ENFORCEMENT OFFICER AND INFLICT SERIOUS BODILY INJURY/CREATE A NEW CRIMINAL OFFENSE OF ASSAULTING FIREFIGHTER

Sec. 20.14B. (a) Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.7. Assault on a law enforcement officer.

Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement officer while the law enforcement officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the law enforcement officer."

(b) G.S. 143-34.6 reads as rewritten:

"§ 14-34.6. Assault or affray on a firefighter; an emergency medical technician, ambulance attendant, emergency department nurse, or emergency department physician.

(a) A person is guilty of a Class A1 misdemeanor if the person commits an assault or an affray on any of the following persons who are discharging or attempting to discharge their official duties:

(1) an An emergency medical technician, technician.

(2) An ambulance attendant, attendant.

(3) An emergency department nurse, or nurse.

(4) An emergency department physician while the technician, attendant, nurse, or physician is discharging or attempting to discharge official duties, physician.

(5) A firefighter.

(b) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class I felony if the person violates subsection (a) of this section and (i) inflicts serious bodily injury or (ii) uses a deadly weapon other than a firearm.

(c) Unless a person's conduct is covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person violates subsection (a) of this section and uses a firearm."

(c) This section becomes effective December 1, 1996, and applies to offenses committed on or after that date.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

ELIMINATE WAIVER OF PRELIMINARY HEARINGS IN PAROLE AND POST-RELEASE SUPERVISION REVOCATION PROCEEDINGS

Sec. 20.15. (a) G.S. 15A-1376 reads as rewritten:

"(b) When and Where Preliminary Hearing on Parole Violation Required. -- Unless the hearing required by subsection (e) is first held ~~or the parolee waives the hearing~~ or a continuance is requested by the parolee, a preliminary hearing on parole violation must be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a parolee to determine whether there is probable cause to believe that he violated a condition of parole. Otherwise, the parolee must be released seven working days after his arrest to continue on parole pending a

hearing. If the parolee is not within the State, his preliminary hearing is as prescribed by G.S. 148-65.1A."

(b) G.S. 15A-1368.6 reads as rewritten:

"(b) When and Where Preliminary Hearing on Post-Release Supervision Violation Required. -- Unless the hearing required by subsection (e) of this section is first held ~~or the supervisee waives the hearing~~ or a continuance is requested by the supervisee, a preliminary hearing on supervision violation shall be held reasonably near the place of the alleged violation or arrest and within seven working days of the arrest of a supervisee to determine whether there is probable cause to believe that the supervisee violated a condition of post-release supervision. Otherwise, the supervisee shall be released seven working days after arrest to continue on supervision pending a hearing. If the supervisee is not within the State, the preliminary hearing is as prescribed by G.S. 148-65.1A."

(c) This section is effective upon ratification.

Requested by: Senators Ballance, Cooper, Rand, Representatives Justus, Thompson, Kiser

FUNDS TO HOUSE PRISONERS OUT OF STATE

Sec. 20.16. In addition to appropriations needed to fund the existing 1,867 contracted beds in out-of-state facilities, the Department of Correction may use up to ten million dollars (\$10,000,000) of the funds appropriated to the Department for the 1996-97 fiscal year to contract to house up to 500 prisoners out of state.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

AUDIT OF DIVISION OF ADULT PROBATION AND PAROLE

Sec. 20.17. The Joint Legislative Corrections Oversight Committee shall develop a plan for conducting a performance audit of the Division of Adult Probation and Parole of the Department of Correction. The plan shall include recommendations on the appropriate entity to conduct the audit, an outline of the issues and areas to be studied, an estimate of the funding necessary to conduct the audit, and the appropriate date for issuance of the final audit report. The plan shall be submitted to the General Assembly upon the convening of the 1997 Regular Session.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Cooper, Rand

ADDITIONAL PRIVATE PRISON BEDS

Sec. 20.18. G.S. 148-37(g) reads as rewritten:

"(g) The Secretary of Correction may contract with private for-profit or nonprofit firms for the provision and operation of ~~two~~ four or more confinement facilities totaling up to ~~1,000~~ 2,000 beds in the State to house State prisoners when to do so would most economically and effectively promote the purposes served by the Department of Correction. This ~~1,000-bed~~ 2,000-bed limitation shall not apply to the 500 beds in private substance abuse treatment centers authorized by the General Assembly prior to July 1, 1995. Whenever the Department of Correction determines that

new prison facilities are required in addition to existing and planned facilities, the Department may contract for any remaining beds authorized by this section before constructing State-operated facilities.

~~Contracts entered under the authority of this subsection shall be for a period not to exceed 10 years, shall be renewable from time to time for a period not to exceed 10 years, and are subject to the approval of the Council of State and the Department of Administration, after consultation with the Joint Legislative Commission on Governmental Operations. Confinement facilities provided under the authority of this subsection shall not be used for the purpose of consolidating existing State confinement facilities.~~ years. The Secretary of Correction shall enter contracts under this subsection only if funds are appropriated for this purpose by the General Assembly. Contracts entered under the authority of this subsection may be subject to any requirements for the location of the confinement facilities set forth by the General Assembly in appropriating those funds.

Once the Department has made a determination to contract for additional private prison beds, it shall issue a request for proposals within 30 days of the decision. The request for proposals shall require bids to be submitted within two months, and the Department shall award contracts at the earliest practicable date after the submission of bids. The Secretary of Correction, in consultation with the Chairs of the Joint Legislative Corrections Oversight Committee and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, shall make recommendations to the State Purchasing Officer on the final award decision. The State Purchasing Officer shall make the final award decision, and the contract shall then be subject to the approval of the Council of State after consultation with the Joint Legislative Commission on Governmental Operations.

Contracts made under the authority of this subsection may provide the State with an option to purchase the confinement facility or may provide for the purchase of the confinement facility by the State. Contracts made under the authority of this subsection shall state that plans and specifications for private confinement facilities shall be furnished to and reviewed by the Office of State Construction. The Office of State Construction shall inspect and review each project during construction to ensure that the project is suitable for habitation and to determine whether the project would be suitable for future acquisition by the State. ~~The Department of Correction may give preference to facilities intended for joint county and State use where such facilities are developed by public/private partnerships and financed by tax-exempt bond issues, and where such facilities offer general terms and conditions favorable to the State in the competitive bidding process pursuant to Article 8 of Chapter 143 of the General Statutes.~~ All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars (\$10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility.

Prisoners housed in private confinement facilities pursuant to this subsection shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The Secretary of Correction

may review and approve the design and construction of private confinement facilities before housing State prisoners in these facilities. The rules regarding good time, gain time, and earned credits, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in private confinement facilities pursuant to this subsection. The operators of private confinement facilities may adopt any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by a private confinement facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction to defend themselves, to enforce the observance of discipline in compliance with confinement facility rules, to secure the person of a prisoner, and to prevent escape. Private firms under this subsection shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction."

Requested by: Representative Thompson, Senator Perdue

PRIVATE PRISON SITES

Sec. 20.19. The two 500-bed private confinement facilities awarded to United States Corrections Corporation pursuant to the provisions of G.S. 148-37(g) and State purchasing and contract procedures shall be located at the Pamlico and Avery/Mitchell sites. Construction shall begin by December 31, 1996, at both of these sites.

Requested by: Senators Plyler, Perdue, Odom, Ballance, Rand, Cooper

CORRECTIONAL FACILITIES

Sec. 20.20. Of the funds authorized in this act for correctional facilities, the sum of two million three hundred fifty thousand dollars (\$2,350,000) shall be used for planning and design of facilities as follows:

<u>Facility</u>	<u>Location</u>	<u>Number of Beds</u>	<u>Custody</u>
Central Prison Diagnostic Center	Wake	196	Close
Warren Correctional Institution	Warren	168	Med./Close
Single Cell Facility	Metro Area	520	Close
208 Bed Dorm and Food Service Bldg. - NCCIW	Wake	-	-
Building to Centralize Personnel	Wake	-	-
Single Cell Facility	Scotland	712	Close
Single Cell Facility	Alexander	520	Close

PART 21. DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Requested by: Representatives Justus, Thompson, Senators Ballance, Parnell

EXTEND DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY STUDY COMMISSION

Sec. 21.1. (a) Section 20.4(d) of Chapter 324 of the 1995 Session Laws reads as rewritten:

"(d) The Study Commission shall make an interim report to the 1996 Regular Session of the 1995 General Assembly by May 1, 1996, and shall submit a final written report of its findings and recommendations to the General Assembly by May 1, 1996. 1997 General Assembly. All reports shall be filed with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate."

(b) This section becomes effective April 30, 1996.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

STUDY LAW ENFORCEMENT OFFICER COMPENSATION AND SALARY CONTINUATION FOR RESIDENTIAL FACILITY EMPLOYEES

Sec. 21.2. (a) The Office of State Personnel shall study:

- (1) Employee classifications, salary schedules, pay equity, and pay inequities for all sworn law enforcement personnel certified by the North Carolina Criminal Justice Education and Training Standards Commission in every State law enforcement agency. The study shall consider appropriate factors related to the compensation of law enforcement personnel, including job specifications and qualifications required by the Office of State Personnel, the compensation of personnel in accordance with educational levels and years of experience, and the equity of compensation between all State law enforcement agencies.
- (2) The feasibility and desirability of providing salary continuation pursuant to Article 12B of Chapter 143 of the General Statutes for employees of State-operated residential facilities who have been injured by acts of persons housed at the facilities or who have been injured while performing supervisory duties over persons housed at the facilities.
- (3) Issues related to civilianizing certain State government law enforcement functions and positions, including the appropriate use of nonsworn, noncertified personnel in positions for which sworn status is not cost-effective or required. This study shall include the recommendations made by the Government Performance Audit Committee on civilianization to the 1993 General Assembly.

(b) The Office of State Personnel shall report to the Criminal Law Study Commission on its findings and recommendations related to the studies mandated by this section no later than December 15, 1996.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

REPORT ON STATE HIGHWAY PATROL POLICY AND PROCEDURES FOR STOPPING MOTORISTS

Sec. 21.3 (a) The Division of the State Highway Patrol, Department of Crime Control and Public Safety, shall report to the Crime Control and Public Safety Study Commission, the Chairs of the House and Senate Appropriations Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the promotional system adopted by the State Highway Patrol on May 15, 1996. The Department shall report on the criteria and qualifications used to rank troopers and supervisors in the system and on the progress of the training process of the system by January 1, 1997. By July 1, 1997, the Department shall report on the implementation of the promotional system, including the number of troopers and supervisors eligible for promotion, the number of troopers and supervisors promoted, and the criteria used to rank each trooper and supervisor promoted under the system.

(b) The Division of the State Highway Patrol, Department of Crime Control and Public Safety, shall report to the Crime Control and Public Safety Study Commission, the Chairs of the House and Senate Appropriations Committees, and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the policy, procedures, and guidelines used by the Division in determining which motorists to stop and question, and which vehicles to search, in relation to any suspected illegal activity by November 1, 1996. The Department shall include in its report a review and explanation of the training of the Special Emphasis Team troopers on drug interdiction, including methods, indicators, and profiles used to detect drug traffickers.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

MAINTAIN BUTNER PUBLIC SAFETY FEES AS GENERAL AVAILABILITY

Sec. 21.4. Effective June 21, 1996, G.S. 122C-411.1 is repealed.

PART 22. JUDICIAL DEPARTMENT

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

ADDITIONAL ASSISTANT DISTRICT ATTORNEYS

Sec. 22. (a) G.S. 7A-60(a1) reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank,	8 <u>9</u>

	Perquimans		
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4	<u>5</u>
3A	Pitt	7	<u>8</u>
3B	Carteret, Craven, Pamlico	6	<u>8</u>
4	Duplin, Jones, Onslow, Sampson	10	<u>12</u>
5	New Hanover, Pender	9	<u>11</u>
6A	Halifax	3	<u>4</u>
6B	Bertie, Hertford, Northampton	3	<u>4</u>
7	Edgecombe, Nash, Wilson	10	<u>12</u>
8	Greene, Lenoir, Wayne	8	<u>10</u>
9	Franklin, Granville, Vance, Warren	8	<u>9</u>
9A	Person, Caswell	2	<u>3</u>
10	Wake	20	<u>23</u>
11	Harnett, Johnston, Lee	10	<u>11</u>
12	Cumberland	12	<u>14</u>
13	Bladen, Brunswick, Columbus	6	<u>8</u>
14	Durham	9	<u>10</u>
15A	Alamance	6	<u>7</u>
15B	Orange, Chatham	5	<u>6</u>
16A	Scotland, Hoke	3	<u>4</u>
16B	Robeson	7	<u>8</u>
17A	Rockingham	4	<u>5</u>
17B	Stokes, Surry	4	<u>5</u>
18	Guilford	18	<u>22</u>
19A	Cabarrus	4	<u>5</u>
19B	Montgomery, Randolph	5	<u>—</u>
19C	Rowan	4	<u>5</u>
20	Anson, Moore, Richmond, Stanly, Union	12	<u>—</u>
21	Forsyth	12	<u>13</u>
22	Alexander, Davidson, Davie, Iredell	11	<u>13</u>
23	Alleghany, Ashe, Wilkes, Yadkin	4	<u>5</u>
24	Avery, Madison, Mitchell, Watauga, Yancey	3	<u>4</u>
25	Burke, Caldwell, Catawba	11	<u>12</u>
26	Mecklenburg	24	<u>29</u>
27A	Gaston	8	<u>10</u>
27B	Cleveland, Lincoln	5	<u>6</u>
28	Buncombe	8	<u>9</u>
29	Henderson, McDowell, Polk, Rutherford, Transylvania	8	<u>10</u>
30	Cherokee, Clay, Graham,	6	<u>7</u>

Haywood, Jackson, Macon,
Swain."

(b) This section becomes effective January 1, 1997.

Requested by: Representatives Justus, Thompson, Senator Ballance
ASSISTANT PUBLIC DEFENDERS

Sec. 22.1. From funds appropriated to the Indigent Persons' Attorney Fee Fund for the 1996-97 fiscal year, the Administrative Office of the Courts may use up to three hundred sixty-five thousand three hundred seventy-six dollars (\$365,376) for salaries, benefits, and related expenses to establish up to 11 new assistant public defenders.

Requested by: Representatives Justus, Thompson, Senator Ballance
RESERVE FOR DRUG TREATMENT COURT PROGRAM

Sec. 22.2. (a) Of the funds appropriated to the Judicial Department in the certified budget for the 1995-96 fiscal year to the Reserve for Court/Drug Treatment Program, established by Section 41 of Chapter 24 of the Session Laws of the 1994 Extra Session, as amended by Section 21.6 of Chapter 507 of the 1995 Session Laws, up to the sum of one hundred seventy-five thousand dollars (\$175,000) of any balance remaining in the reserve shall not revert, but may be used during the 1996-97 fiscal year for nonrecurring program items.

(b) This section becomes effective June 30, 1996.

Requested by: Representatives Justus, Thompson, Senator Ballance
ANNUAL REPORT ON RECIDIVISM

Sec. 22.3. The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly prepare an annual report on recidivism among criminal offenders. The findings of the report shall be based upon methodology similar to that employed in the May 1, 1996, Recidivism Study that was presented to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety. This methodology shall include tracking of all offenders assigned to community corrections programs or released from prison by fiscal year, beginning with the 1993-94 fiscal year for the first year's report, and then identifying those offenders rearrested within two years or more after assignment to a program or release from prison. Community correction programs to be included in the report are the Treatment Alternatives to Street Crime (TASC), the Community Penalties Program, Community Service, all supervised probation and parole programs, and all community correction programs supervised or funded by the Department of Correction.

As part of this joint project, the Department of Correction shall provide the Sentencing and Policy Advisory Commission with a computerized list of offenders released from prison and offenders entering supervised probation during the specified time period. The list shall include specific offender-identifying information and clearly identify offenders entering community corrections programs supervised or funded by the Department of Correction.

The Sentencing and Policy Advisory Commission shall be responsible for matching offenders to Division of Criminal Information (DCI) criminal records and for the production and printing of the final report.

Data collection and report preparation for the first year shall be funded from the sum of four thousand dollars (\$4,000) appropriated to the Judicial Department for the 1996-97 fiscal year for that purpose, and grant funds available to the Department of Correction for the 1996-97 fiscal year, up to the sum of twenty-five thousand dollars (\$25,000). The report shall be due by April 1 of each year.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

AUTHORIZE ADDITIONAL MAGISTRATES

Sec. 22.4. G.S. 7A-133(c) reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min.-Max.		Additional Seats of Court
Camden	1	2	
Chowan	2	3	
Currituck	1	3	
Dare	3	8	
Gates	2	3	
Pasquotank	3	5	
Perquimans	2	3	
Martin	5	8	
Beaufort	4	8	
Tyrrell	1	3	
Hyde	2	4	
Washington	3	4	
Pitt	10	12	Farmville Ayden Havelock
Craven	7	10	
Pamlico	2	3	
Carteret	5	8	
Sampson	6	8	
Duplin	9	11	
Jones	2	3	
Onslow	8	14	
New Hanover	6	11	
Pender	4	6	
Halifax	9	14	Roanoke Rapids, Scotland Neck
Northampton	5	6 7	
Bertie	4	5 6	

Hertford	5	6	
Nash	7	10	Rocky Mount
Edgecombe	4	6	Rocky Mount
Wilson	4	6	
Wayne	5	11	Mount Olive
Greene	2	4	
Lenoir	4	10	La Grange
Granville	3	7	
Vance	3	5 6	
Warren	3	4	
Franklin	3	6	
Person	3	4	
Caswell	2	5	
Wake	12	20	Apex, Wendell, Fuquay- Varina, Wake Forest
Harnett	7	11	Dunn
Johnston	10	12	Benson, Clayton, Selma
Lee	4	6	
Cumberland	10	17	
Bladen	4	6	
Brunswick	4	7	
Columbus	6	8	Tabor City
Durham	8	12	
Alamance	7	10	Burlington
Orange	4	11	Chapel Hill
Chatham	3	8	Siler City
Scotland	3	5	
Hoke	4	5	
Robeson	8	16	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	4	9	Reidsville, Eden, Madison
Stokes	2	5	
Surry	5	9	Mt. Airy
Guilford	20	26	High Point
Cabarrus	5	9	Kannapolis
Montgomery	2	4	
Randolph	5	8 10	Liberty
Rowan	5	10	

Stanly	5	6	
Union	4	6	
Anson	4	5	
Richmond	5	6	Hamlet
Moore	5	8	Southern
			Pines
Forsyth	3	15	Kernersville
Alexander	2	3	
Davidson	7	10	Thomasville
Davie	2	3	
Iredell	4	9	Mooresville
Alleghany	1	2	
Ashe	3	4	
Wilkes	4	6	
Yadkin	3	5	
Avery	3	4	
Madison	4	5	
Mitchell	3	4	
Watauga	4	6	
Yancey	2	4	
Burke	4	7	
Caldwell	4	7	
Catawba	6	10	Hickory
Mecklenburg	15	26	
Gaston	11	20	
Cleveland	5	8	
Lincoln	4	6 7	
Buncombe	6	15	
Henderson	4	6 7	
McDowell	3	5	
Polk	3	4	
Rutherford	6	8	
Transylvania	2	4	
Cherokee	3	4	
Clay	1	2	
Graham	2	3	
Haywood	5	7	Canton
Jackson	3	4	
Macon	3	4	
Swain	2	3.	

Requested by: Senators Odom, Ballance, Cooper, Rand, Representatives Daughtry, Justus, Thompson, Kiser

FOUR NEW SPECIAL SUPERIOR COURT JUDGES/MAKE CURRENT SPECIAL SUPERIOR COURT JUDGE TERMS CONSISTENT

Sec. 22.6. (a) G.S. 7A-45.1 reads as rewritten:

"§ 7A-45.1. *Special judges.*

(a) Effective November 1, 1993, the Governor may appoint two special superior court judges to serve terms expiring ~~December 31, 1998.~~

September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to ~~four-year~~ five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a1) Effective October 1, 1995, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a2) Effective December 15, 1996, the Governor may appoint four special superior court judges to serve terms expiring December 14, 2001. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(b) A special judge is subject to removal from office for the same causes and in the same manner as a regular judge of the superior court, and a vacancy occurring in the office of special judge is filled by the Governor by appointment for the unexpired term.

(c) A special judge, in any court in which he is duly appointed to hold, has the same power and authority in all matters that a regular judge holding the same court would have. A special judge, duly assigned to hold the court of a particular county, has during the session of court in that county, in open court and in chambers, the same power and authority of a regular judge in all matters arising in the district or set of districts as defined in G.S. 7A-41.1(a) in which that county is located, that could properly be heard or determined by a regular judge holding the same session of court.

(d) A special judge is authorized to settle cases on appeal and to make all proper orders in regard thereto after the time for which he was commissioned has expired."

(b) Section 24.7 of Chapter 769 of the 1993 Session Laws reads as rewritten:

"Sec. 24.7. Notwithstanding G.S. 7A-45, G.S. 7A-45.1, Section 7 of Chapter 509 of the 1987 Session Laws, or any other provision of law, if any special superior court judge who is holding office on the effective date of this act first took office as an appointed or elected regular or special superior court judge in the calendar year 1986, the term of that judge is extended through ~~December 31, 1998,~~ September 30, 2000."

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

ADDITIONAL DISTRICT COURT JUDGES

Sec. 22.7. (a) G.S. 7A-133(a) reads as rewritten:

"(a) Each district court district shall have the numbers of judges as set forth in the following table:

District	Judges	County
1	4	Camden Chowan Currituck Dare Gates Pasquotank Perquimans
2	3	Martin Beaufort Tyrrell Hyde Washington
3A	4	Pitt
3B	4	Craven Pamlico Carteret
4	6	Sampson Duplin Jones Onslow
5	6	New Hanover Pender
6A	2	Halifax
6B	3	Northampton Bertie Hertford
7	6	Nash Edgecombe Wilson
8	6	Wayne Greene Lenoir
9	4	Granville (part of Vance see subsection (b)) Franklin
9A	2	Person Caswell
9B	1	Warren (part of Vance see subsection (b))
10	12	Wake
11	6	Harnett

		Johnston
		Lee
12	7 8	Cumberland
13	4	Bladen
		Brunswick
		Columbus
14	5	Durham
15A	3	Alamance
15B	3	Orange
		Chatham
16A	2 3	Scotland
		Hoke
16B	5	Robeson
17A	2	Rockingham
17B	3	Stokes
		Surry
18	11	Guilford
19A	3	Cabarrus
19B	3	Montgomery
		Randolph
19C	3	Rowan
20	7	Stanly
		Union
		Anson
		Richmond
		Moore
21	7	Forsyth
22	7	Alexander
		Davidson
		Davie
		Iredell
23	3 4	Alleghany
		Ashe
		Wilkes
		Yadkin
24	3	Avery
		Madison
		Mitchell
		Watauga
		Yancey
25	7	Burke
		Caldwell
		Catawba
26	14	Mecklenburg
27A	5	Gaston
27B	4	Cleveland
		Lincoln
28	5	Buncombe
29	5	Henderson

30 4

McDowell
 Polk
 Rutherford
 Transylvania
 Cherokee
 Clay
 Graham
 Haywood
 Jackson
 Macon
 Swain."

(b) The Governor shall appoint additional district court judges for District Court Districts 12, 16A, and 23 as authorized by subsection (a) of this section. Those judges' successors shall be elected in the 2000 general election for a four-year term commencing on the first Monday in December 2000.

(c) Subsection (a) of this section becomes effective December 15, 1996, as to any district court district where no county is subject to section 5 of the Voting Rights Act of 1965. As to any district court district where any county is subject to section 5 of the Voting Rights Act of 1965, subsection (a) of this section becomes effective December 15, 1996, or 15 days after the date upon which that subsection is approved under Section 5 of the Voting Rights Act of 1965, whichever is later.

Requested by: Senator Conder, Representative Morgan

DISTRICT COURT JUDGES

Sec. 22.8. (a) Section 2(b) of Chapter 589 of the 1995 Session Laws reads as rewritten:

"(b) ~~Each~~ The district court judgeship held on June 12, 1996, in District Court District 20 by a resident of Moore County (~~Michael Earle Beale~~ and Jayrene Russell Maness) is allocated to District Court District 19B. The district court judgeship held on June 12, 1996, in District Court District 20 by a resident of Moore County (Michael Earle Beale) is allocated to District Court District 20. The term of each of these judges expires December 7, 1998. A successor to each judge shall be elected in the 1998 general election."

(b) Section 2(d) of Chapter 589 of the 1995 Session Laws reads as rewritten:

"(d) The effect of subsections (a) through (c) of this section is also to add an additional district court judgeship in District Court District ~~20~~ 19B effective January 1, 1997. The Governor shall appoint a person to fill the vacancy for the remainder of the term expiring the first Monday in December of ~~2000~~ 1998."

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

MECKLENBURG DRUG COURT FUNDING

Sec. 22.9. It is the intent of the General Assembly that the Mecklenburg Drug Court program be funded as a recurring item within the continuation budget.

Requested by: Representatives Holmes, Creech, Esposito, Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

FUNDING FOR SUPERIOR COURT REPORTERS

Sec. 22.10. It is the intent of the General Assembly that funding for superior court reporters remain a part of the continuation budget.

Requested by: Senators Ballance, Odom, Rand, Cooper, Representatives Justus, Thompson, Kiser

DISTRICT COURT REPORTER OPTION

Sec. 22.11. G.S. 7A-198 is amended by adding a new subsection to read:

"(g) A party to a civil trial in district court may request a private agreement from the opposing party or parties to share equally in the cost of a court reporter to be selected from a list provided by the Administrative Office of the Courts. If the opposing party does not consent to share this cost, the requesting party may nevertheless pay to have a court reporter present to record the trial and, in the event that the opposing party appeals the case, that party shall reimburse the party providing the court reporter in full for the costs incurred for the court reporter's services and transcripts.

In the event that the recording device in a civil trial conducted without a court reporter fails for any reason to provide a reasonably accurate record of the trial for purposes of appeal, then the trial judge shall grant a motion for a new trial made by a losing party whose request pursuant to this section to share the cost of a court reporter was not consented to by the opposing party."

Requested by: Senators Ballance, Rand, Cooper, Representatives Thompson, Justus, Kiser

INDIGENT DEFENSE FUNDS

Sec. 22.12. (a) Of the funds appropriated to the Judicial Department for the 1995-96 fiscal year, the sum of one million dollars (\$1,000,000) shall not revert at the end of the fiscal year but shall remain available for expenditure to cover up to one million dollars (\$1,000,000) of the cost of services provided for indigent defense during the 1995-96 fiscal year.

(b) This section becomes effective June 30, 1996.

Requested by: Senators Rand, Ballance, Cooper, Representatives Justus, Thompson, Kiser

INCREASE FEES IN CRIMINAL CASES IN THE GENERAL COURT OF JUSTICE

Sec. 22.13. (a) G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an

active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

- (1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars (\$5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.
- (2) For the use of the courtroom and related judicial facilities, the sum of six dollars (\$6.00) in the district court, including cases before a magistrate, and the sum of twenty-four dollars (\$24.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.
- (3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50c) of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

- (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75¢), to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.
- (4) For support of the General Court of Justice, the sum of ~~forty-one dollars (\$41.00)~~ forty-six dollars (\$46.00) in the district court, including cases before a magistrate, and the sum of ~~forty-eight dollars (\$48.00)~~ fifty-three dollars (\$53.00) in the superior court, to be remitted to the State Treasurer.
- (5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.
- (6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee."

(b) Subsection (a) of this section becomes effective September 1, 1996, and applies to fees assessed or paid on or after that date.

Requested by: Representatives Justus, Thompson, Grady, Kiser, Senators Ballance, Rand, Cooper

CLERK OF SUPERIOR COURT COMPENSATION STUDY

Sec. 22.14. The Administrative Office of the Courts shall study the position classification and pay plan of the Office of the Clerk of Superior Court. The study shall provide recommendations on the appropriate qualifications and compensation of deputy and assistant clerks for the proper functioning of the Office of the Clerk of Superior Court, and shall include a review of current job classes and any potential new classes. The Administrative Office of the Courts shall report the results of this study and its recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety by March 1, 1997.

PART 23. DEPARTMENT OF JUSTICE

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper

AUTHORIZATION OF FICTITIOUS LICENSES AND REGISTRATION PLATES ON PUBLICLY OWNED MOTOR VEHICLES

Sec. 23. (a) G.S. 20-39(h) reads as rewritten:

"(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, State or federal law-enforcement officers on special undercover assignments with

motor vehicle drivers licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned or leased vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, State or federal law-enforcement agency and be accompanied by approval in writing from the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, State or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a Class 2 misdemeanor. At no time shall the number of valid licenses and registration plates issued under this act exceed ~~fifty~~, one hundred, and those issued shall be strictly monitored by the Director. All of the private registration plates issued to special agents of the State Bureau of Investigation under the Department of Justice and to alcohol law enforcement agents under the Department of Crime Control and Public Safety, pursuant to G.S. 14-250, may be fictitious plates and shall not be counted in the total number of fictitious plates authorized by this subsection."

(b) The Joint Legislative Commission on Governmental Operations shall study the statutory authorization of the use of private, confidential, and fictitious license plates on State-owned motor vehicles and the administration and enforcement of the applicable statutes. The Commission shall report the results of its study to the 1997 General Assembly.

(c) Subsection (a) of this section expires June 30, 1997.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

FINGERPRINT, PHOTOGRAPH, AND RETAIN JURISDICTION OF DELINQUENT JUVENILES

Sec. 23.2. (a) Article 48 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-603. *Fingerprinting and photographing delinquent juveniles.*

(a) A juvenile shall be fingerprinted and photographed by a law enforcement officer or agency upon adjudication of the juvenile as a delinquent pursuant to G.S. 7A-637 if the juvenile was 10 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B, C, D, or E felony if committed by an adult. Upon adjudication,

the court shall order the juvenile be fingerprinted and photographed in a proper format for transfer to the State Bureau of Investigation.

(b) Fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation in a format approved by the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.

(c) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7A-675, shall be maintained separately from any juvenile record, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7A-676."

(b) G.S. 15A-502(c) reads as rewritten:

"(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under G.S. 7A-596 through ~~7A-601~~, 7A-601 and 7A-603."

(c) G.S. 7A-523 reads as rewritten:

"§ 7A-523. *Jurisdiction.*

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent, undisciplined, abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect. For purposes of determining jurisdiction, with the exception of (c) below, the age of the juvenile either at the time of the alleged offense or when the conditions causing the juvenile to be abused, neglected, or dependent arose, governs. There is no minimum age for juveniles alleged to be abused, dependent or neglected. For juveniles alleged to be delinquent or undisciplined, the minimum age is six years of age.

The court also has exclusive original jurisdiction of the following proceedings:

- (1) Proceedings under the Interstate Compact on Juveniles and the Interstate Parole and Probation Hearing Procedures for Juveniles;
- (2) Proceedings to determine whether a juvenile who is on conditional release and under the aftercare supervision of the court counselor has violated the terms of ~~his~~ the juvenile's conditional release established by the Division of Youth Services;
- (3) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when ~~his~~ the juvenile's parent, guardian, legal custodian, or other person standing in loco parentis refuses to consent for treatment to be rendered;
- (4) Proceedings to determine whether a juvenile should be emancipated;
- (5) Proceedings to terminate parental rights;
- (6) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services;

- (7) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7A-544.
- (8) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.

(b) The court shall have jurisdiction over the parent of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected or dependent, as provided by G.S. 7A-564, provided the parent has been properly served with notice pursuant to G.S. 7A-564.

(c) When the court has not obtained jurisdiction over a juvenile before the juvenile reaches the age of eighteen, for a felony and any related misdemeanors the juvenile allegedly committed on or after the juvenile's thirteenth birthday and prior to the juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of conducting proceedings pursuant to Article 49 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition."

(d) G.S. 7A-524 reads as rewritten:

"§7A-524. Retention of jurisdiction.

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until ~~he the juvenile reaches his eighteenth birthday~~ the age of eighteen. When delinquency proceedings cannot be concluded before the juvenile reaches the age of eighteen, the court retains jurisdiction for the sole purpose of conducting proceedings pursuant to Article 49 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition. Any juvenile who is under the jurisdiction of the court and commits a criminal offense after ~~his the juvenile's~~ sixteenth birthday is subject to prosecution as an adult. Any juvenile who is transferred to and sentenced by the superior court for a felony offense shall be prosecuted as an adult for all other crimes alleged to have been committed by ~~him the juvenile while he the juvenile~~ is under the active supervision of the superior court. Nothing herein shall be construed to divest the court of jurisdiction in abuse, neglect, or dependency proceedings."

(e) G.S. 7A-655 reads as rewritten:

"§7A-655. Conditional release and final discharge.

The Division of Youth Services shall release a juvenile either by conditional release or by final discharge. The decision as to which type of release is appropriate shall be made by the Director based on the needs of the juvenile and the best interests of the State under rules and regulations governing release which shall be promulgated by the Division of Youth Services, according to the following guidelines:

- (1) Conditional release is appropriate for a juvenile needing supervision after leaving the institution. As part of the prerelease planning process, the terms of conditional release shall be set out in writing and a copy given to the juvenile, ~~his the juvenile's~~ parent, the committing court, and the court counselor who will provide aftercare supervision. The time that a juvenile spends on conditional release shall be credited toward ~~his the juvenile's~~ maximum period of commitment to the Division of Youth Services.

- (2) Final discharge is appropriate when the juvenile does not require supervision, has completed a maximum commitment for ~~his~~ the juvenile's offense, or is 18 years of age.
- (3) Notwithstanding G.S. 7A-675, before the Division of Youth Services considers for release a juvenile who is serving a commitment for a Class A or B1 felony, the Division shall notify, at least 30 days in advance of considering the release, by first class mail at the last known address:
- The juvenile;
 - The juvenile's parent, guardian, or custodian;
 - The district attorney of the district where the juvenile was adjudicated;
 - The head law enforcement agency that took the juvenile into custody; and
 - The victim, and any of the victim's immediate family members who have requested in writing to be notified
- The notification shall include only the juvenile's name, offense, date of commitment, and date of consideration for release."

(f) Subsections (a) and (b) of this section become effective October 1, 1996, and apply to offenses committed on or after that date. Subsection (d) of this section is effective upon ratification and applies to all cases pending on that date. Subsection (e) of this section becomes effective October 1, 1996, and applies to juveniles considered for release on or after that date. The remainder of this section is effective upon ratification.

Requested by: Senators Ballance, Rand, Cooper, Representatives Justus, Thompson, Kiser

ESTABLISH CRIMINAL JUSTICE INFORMATION NETWORK GOVERNING BOARD

Sec. 23.3. (a) Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Criminal Justice Information Network Governing Board.

"§ 143-660. Definitions.

As used in this Article:

- (1) 'Board' means the Criminal Justice Information Network Governing Board established by G.S. 143-661.
- (2) 'Local government user' means a unit of local government of this State having authorized access to the Network.
- (3) 'Network' means the Criminal Justice Information Network established by the Board pursuant to this Article.
- (4) 'Network user' or 'user' means any person having authorized access to the Network.
- (5) 'State agency' means any State department, agency, institution, board, commission, or other unit of State government.

"§ 143-661. Criminal Justice Information Network Governing Board -- creation; purpose; membership; conflicts of interest.

(a) The Criminal Justice Information Network Governing Board is established within the Department of Justice, State Bureau of Investigation,

to operate the State's Criminal Justice Information Network, the purpose of which shall be to provide the governmental and technical information systems infrastructure necessary for accomplishing State and local governmental public safety and justice functions in the most effective manner by appropriately and efficiently sharing criminal justice information among law enforcement, judicial, and corrections agencies. The Board is established within the Department of Justice, State Bureau of Investigation, for organizational and budgetary purposes only and the Board shall exercise all of its statutory powers in this Article independent of control by the Department of Justice.

(b) The Board shall consist of 15 members, appointed as follows:

(1) Three members appointed by the Governor, including one member who is a director or employee of a State correction agency for a term to begin September 1, 1996 and to expire on June 30, 1997, one member who is an employee of the North Carolina Department of Crime Control and Public Safety for a term beginning September 1, 1996 and to expire on June 30, 1997, and one member selected from the North Carolina Association of Chiefs of Police for a term to begin September 1, 1996 and to expire on June 30, 1999.

(2) Six members appointed by the General Assembly in accordance with G.S. 120-121, as follows:

a. Three members recommended by the President Pro Tempore of the Senate, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1997, and one member selected from the North Carolina League of Municipalities who is a member of, or an employee working directly for, the governing board of a North Carolina municipality for a term to begin on September 1, 1996 and to expire on June 30, 1999; and

b. Three members recommended by the Speaker of the House of Representatives, including two members of the general public for terms to begin on September 1, 1996 and to expire on June 30, 1999, and one member selected from the North Carolina Association of County Commissioners who is a member of, or an employee working directly for, the governing board of a North Carolina county for a term to begin on September 1, 1996 and to expire on June 30, 1997.

(3) Two members appointed by the Attorney General, including one member who is an employee of the Attorney General for a term to begin on September 1, 1996 and to expire on June 30, 1997, and one member from the North Carolina Sheriffs' Association for a term to begin on September 1, 1996 and to expire on June 30, 1999.

(4) Two members appointed by the Chief Justice of the North Carolina Supreme Court, including the Director or an employee of the Administrative Office of the Courts for a term to begin on September 1, 1996 and to expire on June 30, 1997, and one member who is either a clerk of the superior court or a district

attorney, or employee of a district attorney, for a term to begin on September 1, 1996 and to expire on June 30, 1999.

- (5) One member appointed by the Chair of the Information Resource Management Commission, who is the Chair or a member of that Commission, for a term to begin on September 1, 1996 and to expire on June 30, 1999.
- (6) One member appointed by the President of the North Carolina Chapter of the Association of Public Communications Officials International, who is an active member of the Association, for a term to begin on September 1, 1996 and to expire on June 30, 1999.

The respective appointing authorities are encouraged to appoint persons having a background in and familiarity with criminal information systems and networks generally and with the criminal information needs and capacities of the constituency from which the member is appointed.

As the initial terms expire, subsequent members of the Board shall be appointed to serve four-year terms. At the end of a term, a member shall continue to serve on the Board until a successor is appointed. A member who is appointed after a term is begun serves only for the remainder of the term and until a successor is appointed. Any vacancy in the membership of the Board shall be filled by the same appointing authority that made the appointment, except that vacancies among members appointed by the General Assembly shall be filled in accordance with G.S. 120-122.

(c) Members of the Board shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State or to any unit of local government in the State. No member of the Board shall vote on an action affecting solely the member's own State agency or local governmental unit or specific judicial office.

"§ 143-662. Compensation and expenses of Board members; travel reimbursements.

Members of the Board shall serve without compensation but may receive travel and subsistence as follows:

- (1) Board members who are officials or employees of a State agency or unit of local government, in accordance with G.S. 138-6.
- (2) All other Board members, at the rate established in G.S. 138-5.

"§ 143-663. Powers and duties.

(a) The Board shall have the following powers and duties:

- (1) To establish and operate the Network as an integrated system of State and local government components for effectively and efficiently storing, communicating, and using criminal justice information at the State and local levels throughout North Carolina's law enforcement, judicial, and corrections agencies, with the components of the Network to include electronic devices, programs, data, and governance and to set the Network's policies and procedures.
- (2) To develop and adopt uniform standards and cost-effective information technology, after thorough evaluation of the capacity of

information technology to meet the present and future needs of the State and, in consultation with the Information Resource Management Commission, to develop and adopt standards for entering, storing, and transmitting information in criminal justice databases and for achieving maximum compatibility among user technologies.

- (3) To identify the funds needed to establish and maintain the Network, identify public and private sources of funding, and secure funding to:

a. Create the Network and facilitate the sharing of information among users of the Network; and

b. Make grants to local government users to enable them to acquire or improve elements of the Network that lie within the responsibility of their agencies or State agencies; provided that the elements developed with the funds must be available for use by the State or by local governments without cost and the applicable State agencies join in the request for funding.

- (4) To provide assistance to local governments for the financial and systems planning for Network-related automation and to coordinate and assist the Network users of this State in soliciting bids for information technology hardware, software, and services in order to assure compliance with the Board's technical standards, to gain the most advantageous contracts for the Network users of this State, and to assure financial accountability where State funds are used.

- (5) To provide a liaison among local government users and to advocate on behalf of the Network and its users in connection with legislation affecting the Network.

- (6) To facilitate the sharing of knowledge about information technologies among users of the Network.

- (7) To take any other appropriate actions to foster the development of the Network.

(b) All grants or other uses of funds appropriated or granted to the Board shall be conditioned on compliance with the Board's technical and other standards.

"§ 143-664. Election of officers; meetings; staff, etc.

(a) The Governor shall call the first meeting of the Board. At the first meeting, the Board shall elect a chair and a vice-chair, each to serve a one-year term, with subsequent officers to be elected for one-year terms. The Board shall hold at least two regular meetings each year, as provided by policies and procedures adopted by the Board. The Board may hold additional meetings upon the call of the chair or any three Board members. A majority of the Board membership constitutes a quorum.

(b) Pending permanent staffing, the Department shall provide the Board with professional and clerical staff and any additional support the Board needs to fulfill its mandate. The Board may meet in an area provided by the Department of Justice and the Board's staff shall use space provided by the Department."

(b) G.S. 143B-426.21(a) is amended by adding a new subdivision to read:

"(9) The Chair of the Criminal Justice Information Network Governing Board."

(c) The Criminal Justice Information Network Governing Board shall report by April 1, 1997, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the organization, operations, and expenditures of the Board, including the Board's progress in developing data-sharing standards, the progress in the coordination and cooperation of State and local agencies in establishing standards, the Board's recommendations on permanent staffing needs, and the estimated time of completion of the standards. The Board shall also provide a long-term strategic plan and cost analysis for statewide implementation of the Criminal Justice Information Network as well as a report on the State and local law enforcement agencies' implementation of the mobile data network system, including the amount of funds spent on the system as of the date of the report and the long-term costs of implementing the system statewide.

(d) Of the funds appropriated in this act to the reserve for the Criminal Justice Information Network Governing Board, the sum of three hundred thousand dollars (\$300,000) shall be used to fund the development of data standards for the Network and the sum of one hundred thousand dollars (\$100,000) shall be used to support the operation of the Board, including staff salaries, benefits, and related expenses. Funds appropriated to the reserve for the Criminal Justice Information Network Governing Board shall not revert.

Requested by: Representatives Justus, Thompson, Kiser, Senators Ballance, Rand, Cooper, Plexico

REPAIRS AND RENOVATIONS OF THE WESTERN JUSTICE ACADEMY

Sec. 23.4. (a) The Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of facilities in order to implement the repairs and renovations of the Western Justice Academy under the provisions of this section without being subject to the following statutes and rules implementing those statutes: G.S. 143-135.26, 143-131, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 133-1.1(g). The Department of Justice shall let contracts for all repairs and renovations of the Academy as soon as possible, but not later than December 1, 1996.

The Department of Justice shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of facilities shall include a penalty for failure to complete the work by a specified date.

(b) The Department of Justice shall provide quarterly reports to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and

Public Safety, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division on the repairs and renovations to the Western Justice Academy. The report shall include information on which contractors have been selected, what contracts have been entered into, and the projected and actual cost of the project.

(c) Of the funds allocated in this act to the Office of State Budget and Management from the Repairs and Renovations Fund, up to six million dollars (\$6,000,000) may be used by the Department of Justice to implement this section.

PART 24. DEPARTMENT OF HUMAN RESOURCES

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

MEDICAID

Sec. 24. Section 23.14 of Chapter 324, 1995 Session Laws, reads as rewritten:

"Sec. 23.14. (a) Funds appropriated in this act for services provided in accordance with Title XIX of the Social Security Act (Medicaid) are for both the categorically needy and the medically needy. Funds appropriated for these services shall be expended in accordance with the following schedule of services and payment bases. All services and payments are subject to the language at the end of this subsection.

Services and payment bases:

- (1) Hospital-Inpatient - Payment for hospital inpatient services will be prescribed in the State Plan as established by the Department of Human Resources. Administrative days for any period of hospitalization shall be limited to a maximum of three days.
- (2) Hospital-Outpatient - Eighty percent (80%) of allowable costs or a prospective reimbursement plan as established by the Department of Human Resources.
- (3) Nursing Facilities - Payment for nursing facility services will be prescribed in the State Plan as established by the Department of Human Resources. Nursing facilities providing services to Medicaid recipients who also qualify for Medicare, must be enrolled in the Medicare program as a condition of participation in the Medicaid program. State facilities are not subject to the requirement to enroll in the Medicare program.
- (4) Intermediate Care Facilities for the Mentally Retarded - As prescribed in the State Plan as established by the Department of Human Resources.
- (5) Drugs - Drug costs as allowed by federal regulations plus a professional services fee per month excluding refills for the same drug or generic equivalent during the same month. Reimbursement shall be available for up to six prescriptions per recipient, per month, including refills. Payments for drugs are subject to the provisions of subsection (f) of this section and to the provisions at the end of subsection (a) of this section, or in accordance with the State Plan adopted by the Department of

Human Resources consistent with federal reimbursement regulations. Payment of the professional services fee shall be made in accordance with the Plan adopted by the Department of Human Resources, consistent with federal reimbursement regulations. The professional services fee shall be five dollars and sixty cents (\$5.60) per prescription. Adjustments to the professional services fee shall be established by the General Assembly.

- (6) Physicians, Chiropractors, Podiatrists, Optometrists, Dentists, Certified Nurse Midwife Services - Fee schedules as developed by the Department of Human Resources. Payments for dental services are subject to the provisions of subsection (g) of this section.
- (7) Community Alternative Program, EPSDT Screens - Payment to be made in accordance with rate schedule developed by the Department of Human Resources.
- (8) Home Health and Related Services, Private Duty Nursing, Clinic Services, Prepaid Health Plans, Durable Medical Equipment - Payment to be made according to reimbursement plans developed by the Department of Human Resources.
- (9) Medicare Buy-In - Social Security Administration premium.
- (10) Ambulance Services - Uniform fee schedules as developed by the Department of Human Resources.
- (11) Hearing Aids - Actual cost plus a dispensing fee.
- (12) Rural Health Clinic Services - Provider-based - reasonable cost; nonprovider based - single cost reimbursement rate per clinic visit.
- (13) Family Planning - Negotiated rate for local health departments. For other providers - see specific services, for instance, hospitals, physicians.
- (14) Independent Laboratory and X-Ray Services - Uniform fee schedules as developed by the Department of Human Resources.
- (15) Optical Supplies - One hundred percent (100%) of reasonable wholesale cost of materials.
- (16) Ambulatory Surgical Centers - Payment as prescribed in the reimbursement plan established by the Department of Human Resources.
- (17) Medicare Crossover Claims - An amount up to the actual coinsurance or deductible or both, in accordance with the Plan, as approved by the Department of Human Resources.
- (18) Physical Therapy and Speech Therapy - Services limited to EPSDT eligible children. Payments are to be made only to ~~the Children's Special Health Services program~~ qualified providers at rates negotiated by the Department of Human Resources.
- (19) Personal Care Services - Payment in accordance with Plan approved by the Department of Human Resources.
- (20) Case Management Services - Reimbursement in accordance with the availability of funds to be transferred within the Department of Human Resources.

- (21) Hospice - Services may be provided in accordance with Plan developed by the Department of Human Resources.
- (22) Other Mental Health Services - Unless otherwise covered by this section, coverage is limited to agencies meeting the requirements of the rules established by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, and reimbursement is made in accordance with a Plan developed by the Department of Human Resources not to exceed the upper limits established in federal regulations.
- (23) Medically Necessary Prosthetics or Orthotics for EPSDT Eligible Children - Reimbursement in accordance with Plan approved by the Department of Human Resources.
- (24) Health Insurance Premiums - Payments to be made in accordance with the Plan adopted by the Department of Human Resources consistent with federal regulations.
- (25) Medical Care/Other Remedial Care - Services not covered elsewhere in this section include related services in schools; health professional services provided outside the clinic setting to meet maternal and infant health goals; and services to meet federal EPSDT mandates. Services addressed by this paragraph are limited to those prescribed in the State Plan as established by the Department of Human Resources. Providers of these services must be certified as meeting program standards of the Department of Environment, Health, and Natural Resources.
- (26) Pregnancy Related Services - Covered services for pregnant women shall include nutritional counseling, psychosocial counseling, and predelivery and postpartum home visits by maternity care coordinators and public health nurses.

Services and payment bases may be changed with the approval of the Director of the Budget.

Reimbursement is available for up to 24 visits per recipient per year to any one or combination of the following: physicians, clinics, hospital outpatient, optometrists, chiropractors, and podiatrists. Prenatal services, all EPSDT children, and emergency rooms are exempt from the visit limitations contained in this paragraph. Exceptions may be authorized by the Department of Human Resources where the life of the patient would be threatened without such additional care. Any person who is determined by the Department to be exempt from the 24-visit limitation may also be exempt from the six-prescription limitation.

(b) Allocation of Nonfederal Cost of Medicaid. The State shall pay eighty-five percent (85%); the county shall pay fifteen percent (15%) of the nonfederal costs of all applicable services listed in this section.

(c) Copayment for Medicaid Services. The Department of Human Resources may establish copayment up to the maximum permitted by federal law and regulation.

(d) Medicaid and Aid to Families With Dependent Children Income Eligibility Standards. The maximum net family annual income eligibility standards for Medicaid and Aid to Families with Dependent Children, and

the Standard of Need for Aid to Families with Dependent Children shall be as follows:

<u>Family Size</u>	<u>Categorically Needy</u>	<u>Medically Needy</u>	
	<u>Standard of Need</u>	<u>AFDC Payment Level*</u>	<u>AA, AB, AD*</u>
1	\$ 4,344	\$ 2,172	\$ 2,900
2	5,664	2,832	3,800
3	6,528	3,264	4,400
4	7,128	3,564	4,800
5	7,776	3,888	5,200
6	8,376	4,188	5,600
7	8,952	4,476	6,000
8	9,256	4,680	6,300

*Aid to Families With Dependent Children (AFDC); Aid to the Aged (AA); Aid to the Blind (AB); and Aid to the Disabled (AD).

The payment level for Aid to Families With Dependent Children shall be fifty percent (50%) of the standard of need.

These standards may be changed with the approval of the Director of the Budget with the advice of the Advisory Budget Commission.

(e) All Elderly, Blind, and Disabled Persons who receive Supplemental Security Income are eligible for Medicaid coverage.

(f) ICF and ICF/MR Work Incentive Allowances. The Department of Human Resources may provide an incentive allowance to Medicaid-eligible recipients of ICF and ICF/MR facilities who are regularly engaged in work activities as part of their developmental plan and for whom retention of additional income contributes to their achievement of independence. The State funds required to match the federal funds that are required by these allowances shall be provided from savings within the Medicaid budget or from other unbudgeted funds available to the Department. The incentive allowances may be as follows:

<u>Monthly Net Wages</u>	<u>Monthly Incentive Allowance</u>
\$1.00 to \$100.99	Up to \$50.00
\$101.00 - \$200.99	\$80.00
\$201.00 to \$300.99	\$130.00
\$301.00 and greater	\$212.00.

(g) Dental Coverage Limits. Dental services shall be provided on a restricted basis in accordance with rules adopted by the Department to implement this subsection.

(h) Dispensing of Generic Drugs. Notwithstanding G.S. 90-85.27 through G.S. 90-85.31, under the Medical Assistance Program (Title XIX of the Social Security Act) a prescription order for a drug designated by a trade or brand name shall be considered to be an order for the drug by its

established or generic name, except when the prescriber personally indicates, either orally or in his own handwriting on the prescription order, 'dispense as written' or words of similar meaning. Generic drugs, when available in the pharmacy, shall be dispensed at a lower cost to the Medical Assistance Program rather than trade or brand name drugs, subject to the prescriber's 'dispense as written' order as noted above.

As used in this subsection 'brand name' means the proprietary name the manufacturer places upon a drug product or on its container, label, or wrapping at the time of packaging; and 'established name' has the same meaning as in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act as amended, 21 U.S.C. § 352(e)(3).

(i) Exceptions to Service Limitations, Eligibility Requirements, and Payments. Service limitations, eligibility requirements, and payments bases in this section may be waived by the Department of Human Resources, with the approval of the Director of the Budget, to allow the Department to carry out pilot programs for prepaid health plans, managed care plans, or community-based services programs in accordance with plans approved by the United States Department of Health and Human Services, or when the Department determines that such a waiver will result in a reduction in the total Medicaid costs for the recipient.

(j) Volume Purchase Plans and Single Source Procurement. The Department of Human Resources, Division of Medical Assistance, may, subject to the approval of a change in the State Medicaid Plan, contract for services, medical equipment, supplies, and appliances by implementation of volume purchase plans, single source procurement, or other similar processes in order to improve cost containment.

(k) Cost Containment Programs. The Department of Human Resources, Division of Medical Assistance, may undertake cost containment programs including preadmissions to hospitals and prior approval for certain outpatient surgeries before they may be performed in an inpatient setting.

(l) For all Medicaid eligibility classifications for which the federal poverty level is used as an income limit for eligibility determination, the income limits will be updated each April 1 immediately following publication of federal poverty guidelines.

(m) The Department of Human Resources shall provide Medicaid to 19-, 20-, and 21-year olds in accordance with federal rules and regulations.

(n) The Department of Human Resources shall provide coverage to pregnant women and to children according to the following schedule:

- (1) Pregnant women with incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.
- (2) Infants under the age of 1 with family incomes equal to or less than one hundred eighty-five percent (185%) of the federal poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits;~~ benefits.
- (3) Children aged 1 through 5 with family incomes equal to or less than one hundred thirty-three percent (133%) of the federal

poverty guidelines as revised each April 1 shall be covered for Medicaid ~~benefits; benefits.~~

- (4) Children aged 6 through 18 with family incomes equal to or less than the federal poverty guidelines as revised each April 1 shall be covered for Medicaid benefits. ~~Services to pregnant women eligible under this section continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children eligible under this section, no resources test shall be applied; and~~
- (5) The Department of Human Resources shall provide Medicaid coverage for adoptive children with special or rehabilitative needs regardless of the adoptive family's income.

Services to pregnant women eligible under this subsection continue throughout the pregnancy but include only those related to pregnancy and to those other conditions determined by the Department as conditions that may complicate pregnancy. In order to reduce county administrative costs and to expedite the provision of medical services to pregnant women, to infants, and to children described in subdivisions (3) and (4) of this subsection, no resources test shall be applied.

(o) The Department of Human Resources may use Medicaid funds budgeted from program services to support the cost of administrative activities to the extent that these administrative activities produce a net savings in services requirements. Administrative initiatives funded by this section shall be first approved by the Office of State Budget and Management.

(p) The Department of Human Resources shall submit a monthly status report on expenditures for acute care and long-term care services to the Fiscal Research Division and to the Office of State Budget and Management. This report shall include an analysis of budgeted versus actual expenditures for eligibles by category and for long-term care beds. In addition, the Department shall revise the program's projected spending for the current fiscal year and the estimated spending for the subsequent fiscal year on a quarterly basis. Reports for the preceding month shall be forwarded to the Fiscal Research Division and to the Office of State Budget and Management no later than the third Thursday of the month.

(q) The Division of Medical Assistance, Department of Human Resources, may provide incentives to counties that successfully recover fraudulently spent Medicaid funds by sharing State savings with counties responsible for the recovery of the fraudulently spent funds.

(r) If first approved by the Office of State Budget and Management, the Division of Medical Assistance, Department of Human Resources, may use funds that are identified to support the cost of development and acquisition of equipment and software through contractual means to improve and enhance information systems that provide management information and claims processing.

(s) The Division of Medical Assistance, Department of Human Resources, may administer Medicaid estate recovery mandated by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42 U.S.C. § 1396p(b), and G.S. 108-70.5 using temporary rules pending approval of final rules promulgated pursuant to Chapter 150B of the General Statutes.

(t) The Department of Human Resources may adopt temporary rules according to the procedures established in G.S. 150B-21.1 when it finds that such rules are necessary to maximize receipt of federal funds, to reduce Medicaid expenditures, and to reduce fraud and abuse."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
NONMEDICAID REIMBURSEMENT CHANGES

Sec. 24.1. Section 23.16 of Chapter 324 of the 1995 Session Laws, as amended by Section 23.5 of Chapter 507, 1995 Session Laws, reads as rewritten:

"Providers of medical services under the various State programs, other than Medicaid, offering medical care to citizens of the State shall be reimbursed at rates no more than those under the North Carolina Medical Assistance Program. Hospitals that provide psychiatric inpatient care for Thomas S. class members or adults with mental retardation and mental illness may be paid an additional incentive payment not to exceed fifteen percent (15%) of their regular daily per diem reimbursement.

The Department of Human Resources may reimburse hospitals at the full prospective per diem rates without regard to the Medical Assistance Program's annual limits on hospital days. When the Medical Assistance Program's per diem rates for inpatient services and its interim rates for outpatient services are used to reimburse providers in non-Medicaid medical service programs, retroactive adjustments to claims already paid shall not be required.

Notwithstanding the provisions of paragraph one, the Department of Human Resources may negotiate with providers of medical services under the various Department of Human Resources programs, other than Medicaid, for rates as close as possible to Medicaid rates for the following purposes: contracts or agreements for medical services and purchases of medical equipment and other medical supplies. These negotiated rates are allowable only to meet the medical needs of its non-Medicaid eligible patients, residents, and clients who require such services which cannot be provided when limited to the Medicaid rate.

Maximum net family annual income eligibility standards for services in these programs shall be as follows:

Family Size	Medical Eye Care Adults	All Rehabilitation	Other
1	\$ 4,860	\$ 8,364	\$ 4,200
2	5,940	10,944	5,300
3	6,204	13,500	6,400
4	7,284	16,092	7,500
5	7,824	18,648	7,900
6	8,220	21,228	8,300

7	8,772	21,708	8,800
8	9,312	22,220	9,300

The eligibility level for children in the Medical Eye Care Program in the Division of Services for the Blind and for adults in the ~~Clozaril~~ Atypical Antipsychotic Medication Program in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall be one hundred percent (100%) of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services and in effect on July 1 of each fiscal year. Additionally, those adults enrolled in the ~~Clozaril~~ Atypical Antipsychotic Medication Program who become gainfully employed may continue to be eligible to receive State support, in decreasing amounts, for the purchase of ~~Clozaril~~ atypical antipsychotic medication and related services up to three hundred percent (300%) of the poverty level.

State financial participation in the ~~Clozaril~~ Atypical Antipsychotic Medication Program for those enrollees who become gainfully employed is as follows:

<u>Income</u> (% of poverty)	<u>State Participation</u>	<u>Client Participation</u>
0-100%	100%	0%
101-120%	95%	5%
121-140%	85%	15%
141-160%	75%	25%
161-180%	65%	35%
191-180%	65%	35%
181-200%	55%	45%
201-220%	45%	55%
221-240%	35%	65%
241-260%	25%	75%
261-280%	15%	85%
281-300%	5%	95%
301%-over	0%	100%.

The Department of Human Resources shall contract at, or as close as possible to, Medicaid rates for medical services provided to residents of State facilities of the Department."

Requested by: Representatives Gardner, Nye, Russell, Senators Martin of Guilford, Lucas

MEDICAID SUBROGATION CHANGE/LRC STUDY

Sec. 24.2. (a) G.S. 108A-57 reads as rewritten:

"§ 108A-57. *Subrogation rights; withholding of information a misdemeanor.*

(a) Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of ~~such this~~ such this assistance, or of ~~his the~~ the beneficiary's personal representative, ~~his~~ his heirs, or the administrator or executor of ~~his the~~ the estate, against any person. ~~It shall be the responsibility~~

~~of the The county attorney attorney, or an attorney retained by the county and/or or the State or both, or an attorney retained by the beneficiary of the assistance if such this attorney has actual notice of payments made under this Part to shall enforce this section, and said attorney shall be compensated for his services in accordance with the attorneys' fee arrangements approved by the Department; provided, however, that any attorney retained by the beneficiary of the assistance shall be compensated for his services in accordance with the following schedule and in the following order of priority from any amount obtained on behalf of the beneficiary by settlement with judgment against, or otherwise from a third party by reason of such injury or death: section. Any attorney retained by the beneficiary of the assistance shall, out of the proceeds obtained on behalf of the beneficiary by settlement with judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department the amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered.~~

- ~~(1) First to the payment of any court costs taxed by the judgment;~~
- ~~(2) Second to the payment of the fee of the attorney representing the beneficiary making the settlement or obtaining the judgment, but this fee shall not exceed one third of the amount obtained or recovered to which the right of subrogation applies;~~
- ~~(3) Third to the payment of the amount of assistance received by the beneficiary as prorated with other claims against the amount obtained or received from the third party to which the right of subrogation applies, but the amount shall not exceed one third of the amount obtained or recovered to which the right of subrogation applies; and~~
- ~~(4) Fourth to the payment of any amount remaining to the beneficiary or his personal representative.~~

The United States and the State of North Carolina shall be entitled to shares in each net recovery under this section. Their shares shall be promptly paid under this section and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient.

(b) ~~It shall be is~~ a Class 1 misdemeanor for any person seeking or having obtained assistance under this Part for himself or another to willfully fail to disclose to the county department of social services or its attorney the identity of any person or organization against whom the recipient of assistance has a right of recovery, contractual or otherwise."

(b) The Legislative Research Commission may study issues relating to the Medicaid subrogation statute, G.S. 108A-57, including State compliance with federal law as it relates to recovery of Medicaid expenditures, the appropriate amount of attorneys' fees and costs, if any, the State should pay for recovery of Medicaid expenditures, and the appropriate amount, if any, that should be guaranteed to the client for whom the underlying action is brought.

(c) The Legislative Research Commission may report the results of its study, along with any legislative proposals and costs analyses, to the 1997 General Assembly.

(d) This section becomes effective as of the effective date of this act and applies to claims filed on or after August 15, 1995.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
THOMAS S.

Sec. 24.4. Section 23.21 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.21. (a) Funds appropriated to the Department of Human Resources in this act for the 1995-96 fiscal year and the 1996-97 fiscal year for members of the Thomas S. Class as identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

- (1) Adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a State psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members;
- (2) Adults with mental retardation who have a documented history of State psychiatric hospital admissions regardless of admission date and who, without funding support, have a good probability of being readmitted to a State psychiatric hospital;
- (3) Adults with mental retardation who have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment and who, without funding support, have a good probability of being admitted to a State psychiatric hospital; or
- (4) Adults who are included on the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services' official list of prospective Class members and have yet to be confirmed as Class members, who currently reside in the community, and who have a good probability of being admitted to a facility licensed as a 'home for the aged and disabled'.

No more than five percent (5%) of the funds appropriated in this act for the Thomas S. program shall be used for clients meeting subdivisions (2), (3), or (4) of this subsection.

(b) To ensure that Thomas S. Class members are appropriately served, no State funds shall be expended on placement and services for Thomas S. Class members except:

- (1) Funds specifically appropriated by the General Assembly for the placement and services of Thomas S. Class members; and
- (2) Funds for placement and services for which Thomas S. Class members are otherwise eligible.

(b) Thomas S. funds may be expended to support services for Thomas S. Class members in adult care homes when the service needs of individual Class members in these homes cannot be met via the established maximum adult care home rate.

(c) The Department of Human Resources shall continue to implement a prospective unit cost reimbursement system and shall ensure that unit cost rates reflect reasonable costs by conducting cost center service type rate comparisons and cost center line item budget reviews as may be necessary.

(d) Reporting requirements. The Department of Human Resources shall submit by April 1 of each fiscal year a report to the General Assembly on the progress achieved in serving members and prospective members of the Thomas S. Class. The report shall include the following:

- (1) The number of Thomas S. clients confirmed as Class members;
- ~~(2) The number of prospective Class members evaluated;~~
- ~~(3) The number of prospective Class members awaiting evaluation;~~
- (3a) The number of individuals identified as prospective Class members;
- (4) The number of Class members or prospective Class members added in the preceding 12 months due to their admission to a State psychiatric hospital;
- (5) A description of the types of treatment services provided to Class members; and
- (6) An analysis of the use of funds appropriated for the Class.

(e) Notwithstanding any other provision of law, if the Department of Human Resources determines that a local program is not providing minimally adequate services to members of the Class identified in Thomas S., et al. v. Britt, formerly Thomas S., et al. v. Flaherty, or does not show a willingness to do so, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department of these programs."

Requested by: Representatives Holmes, Creech, Esposito, Senator Martin of Guilford

THOMAS S. FUNDS

Sec. 24.4A. If Thomas S. funds are not sufficient, then notwithstanding G.S. 143-16.3 and G.S. 143-23, the Director of the Budget may use funds available to the Department in an amount not to exceed twelve million eight hundred thousand dollars (\$12,800,000).

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

EXTENSION OF TASK FORCE TO DETERMINE A MINIMUM REIMBURSEMENT RATE FOR ADULT DEVELOPMENTAL ACTIVITY PROGRAMS (ADAP)

Sec. 24.5. Section 1 of Chapter 481 of the 1995 Session Laws reads as rewritten:

"Section 1. The Secretary of the Department of Human Resources shall establish in the Office of the Secretary a special task force to determine a minimum reimbursement rate for Adult Developmental Activity Programs

(ADAP). In addition, this task force shall review the current funding stream to ensure that it is the most effective way possible to provide day services to adults with developmental disabilities, including which division within the Department is most appropriate for this program. The task force shall report to the ~~Mental Health Study Commission~~ Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the results of its study in time for these results to be included in the Commission's report to the ~~1995 General Assembly, Regular Session 1996,~~ 1997 General Assembly. The task force shall terminate after the presentation of its report to the Commission.

At a minimum, the task force shall consist of:

- (1) Two representatives from community rehabilitation programs;
- (2) A representative from the Department of Human Resources;
- (3) A representative from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (4) A representative from the Division of Vocational Rehabilitation; and
- (5) A representative from the Association for Retarded Citizens.

This task force shall be funded by funds available to the Department."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
CONSOLIDATION OF JOHN UMSTEAD HOSPITAL AND THE ADATC-BUTNER OPERATING FUND

Sec. 24.6. As the administrative and programmatic functions of John Umstead Hospital and the ADATC-Butner (Alcohol and Drug Abuse Treatment Center at Butner) have been consolidated in an effort to streamline administrative costs, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services may consolidate the operating budget of these two institutions.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
IMPROVEMENT OF OPERATING EFFICIENCIES IN COLLOCATED INSTITUTIONS

Sec. 24.7. The Department of Human Resources' colocated institutions shall create operating efficiencies in support functions through increased service coordination across facilities. The Department shall ensure that annual savings in salary and supplies of at least one hundred thousand dollars (\$100,000) are achieved in the 1996-97 fiscal year and in every fiscal year thereafter. These institutions' managers shall be included in the process and in the determination of the methods for achieving the required savings.

Requested by: Representatives Gardner, Hayes, Alexander, Nye, Russell, Senators Martin of Guilford, Lucas, Winner
LEGISLATIVE STUDY COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

Sec. 24.8. (a) Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 23."The Legislative Study Commission on Mental Health,
Developmental Disabilities, and Substance Abuse Services."§ 120-204. Commission created; purpose.

There is established in the General Assembly a Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services. This commission shall study systemwide issues affecting the development, administration, and delivery of mental health, developmental disabilities, and substance abuse services, including issues relating to the governance, accountability, and quality of services delivered.

"§ 120-205. Commission membership; meetings; terms; vacancies.

(a) This commission shall be composed of 21 members appointed as follows:

- (1) Seven members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives. Of these members, one shall be a Chair of the House Appropriations Subcommittee on Human Resources;
- (2) Seven members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate. Of these members, one shall be the Chair of the Senate Human Resources Appropriations Committee;
- (3) Three members who are representatives of Coalition 2001, appointed by the Governor. Of these members, one shall be a representative from mental health, one from developmental disabilities, and one from substance abuse services;
- (4) Two members of the public, appointed by the Speaker of the House of Representatives. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the Speaker of the House of Representatives may appoint any county commissioner; and
- (5) Two members of the public, appointed by the President Pro Tempore of the Senate. Of these members, one shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners. If the Association has failed to submit nominations by September 1, 1996, the President Pro Tempore of the Senate may appoint any county commissioner.

(b) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a legislative member from their appointments to serve as cochair of the commission. Meetings shall be called at the will of the cochairs.

(c) All members shall serve at the will of their appointing officer. Unless removed or unless resigning, members shall serve for two-year terms. Members may be reappointed. Vacancies in membership shall be filled by the appropriate appointing officer.

"§ 120-206. Powers; per diem, subsistence, and travel allowances.

(a) The commission may contract for consulting services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the commission. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the commission through the offices of the House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the commission. The commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The commission, while in the discharge of official duties, may exercise all powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records, and the power to subpoena witnesses.

(b) Members of the commission shall receive per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
- (3) All other commission members, at the rate established in G.S. 138-5.

" < font=2) § 120-207. Reporting.

The commission shall report the results of its study, together with any legislative proposals and costs analyses, to every regular session of the General Assembly within a week of its convening."

(b) Part XIII, Sections 13.1 through 13.4 of Chapter 542 of the 1995 Session Laws, is repealed.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
**AREA MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND
 SUBSTANCE ABUSE SERVICES PROGRAMS
 REDUCTIONS/SPECIFICATIONS**

Sec. 24.9. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services shall ensure that reductions in its State appropriations for the 1996-97 fiscal year that are allocated to area mental health, developmental disabilities, and substance abuse programs are applied by the area authorities only to those services and programs in which additional increased federal TITLE IVA-Emergency Assistance and Medicaid revenues are anticipated.

Requested by: Senators Martin of Guilford, Lucas, Representatives Gardner, Hayes, Russell, Nye
CAROLINA ALTERNATIVES EXPANSION LIMITS

Sec. 24.10. The Department of Human Resources shall move forward with planning, readiness assessments, and other necessary activities to be able to expand the Carolina Alternatives Child and Adult Waiver Pilot Program. Prior to actual implementation of additional covered populations, during fiscal year 1996-97, the Department shall:

- (1) Receive approval from the Health Care Financing Administration;
- (2) Make a determination that each area authority that is going to participate in the pilot has the capacity to implement the waiver;
- (3) Obtain certification from the Office of State Budget and Management that expansion of Carolina Alternatives is budget neutral, excluding the payment of claims related to the transition from fee-for-service to Medicaid managed care, and authorization from the Office of State Budget and Management to proceed with the pilot;
- (4) Evaluate capitation rates to determine if they are adequate to provide appropriate services;
- (5) Develop five-year cost estimates for Carolina Alternatives;
- (6) Prepare a summary of the number, nature, and resolution of complaints concerning Carolina Alternatives received by the local area authorities during 1996; and
- (7) Submit a report to the 1997 General Assembly and the Fiscal Research Division on subdivisions (3) through (6) of this section.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
CLINICAL SOCIAL WORKER EXEMPTION

Sec. 24.11. Section 8 of Chapter 732 of the 1991 Session Laws reads as rewritten:

"Sec. 8. This act becomes effective January 1, 1992. G.S. 90B-10(b)(3)a. is repealed effective January 1, ~~1997~~ 1999. The term of the additional Board position for clinical social worker created by this act shall commence upon the expiration of the term of the public member whose term expires first."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
FOSTER CARE REPORTING REPEALED

Sec. 24.12. Section 23.22 of Chapter 324 of the 1995 Session Laws is repealed.

Requested by: Representatives Holmes, Creech, Esposito, Gardner, Hayes, Senator Martin of Guilford

CHILD SUPPORT RESERVE SHALL NOT REVERT

Sec. 24.13. (a) Any funds appropriated to the Reserve for Child Support Legislation for the 1995-96 fiscal year but not expended as of June 30, 1996, shall not revert but shall remain available for the 1996-97 fiscal year to implement the provisions contained in Chapter 538 of the 1995 Session Laws.

(b) This section is effective June 30, 1996.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

AFDC EMERGENCY ASSISTANCE RULES CLARIFIED

Sec. 24.14. The Social Services Commission shall ensure that Aid to Families With Dependent Children Emergency Assistance (AFDC-EA) cash is provided only to those with verifiable emergencies by:

- (1) Ensuring that the applicant produce documented verification of the emergency for which AFDC-EA cash is requested; except that where it is unreasonable or not feasible to obtain written verification, such verification can be achieved through telephonic or other reliable means of communication; and
- (2) Ensuring that the verified emergency is one that would threaten the health, safety, or well-being of the child or children in the care or custody of the applicant.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

REVIEW OF AUTOMATED COLLECTION AND TRACKING SYSTEM

Sec. 24.15. The Information Resource Management Commission shall conduct a quarterly review of the Automated Collection and Tracking System (ACTS) project being developed by the Department of Human Resources. The review shall include an analysis of the problems encountered and progress achieved, identify critical issues to be resolved, and estimate the final cost and date of completion. The review shall be submitted through the Office of the State Controller to the chairs of the House and Senate Appropriations committees, the chairs of the House and Senate Human Resources Appropriations subcommittees, and to the Director of the Fiscal Research Division of the Legislative Services Office of the General Assembly no later than the last day of each quarter.

Requested by: Senators Martin of Guilford, Lucas, Representatives Gardner, Nye, Russell

CLARIFICATION OF AUTHORIZED ADDITIONAL USE OF HIV FOSTER CARE AND ADOPTIVE FAMILY FUNDS

Sec. 24.16. Section 23.9 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 23.9. In addition to providing board payments to foster and adoptive families of HIV-infected children as prescribed in Chapter 324 of the 1995 Session Laws, any additional funds remaining that were appropriated in Chapter 324 of the 1995 Session Laws for this purpose shall be used as follows:

- (1) To provide medical training in avoiding HIV transmission in the home; and
- (2) To transfer funds to the Department of Environment, Health, and Natural Resources to create three social work positions within the Department of Environment, Health, and Natural Resources, for the eastern part of North Carolina to enable the case-managing of families with HIV-infected children so that the children and the parents get access to medical care and so that child protective

services issues are addressed rapidly and effectively. The three positions shall be medically based and located:

- a. One in the northeast, covering Northampton, Hertford, Halifax, Gates, Chowan, Perquimans, Pasquotank, Camden, Currituck, Bertie, Wilson, Edgecombe, and Nash Counties;
- b. One in the central east, covering Martin, Pitt, Washington, Tyrrell, Dare, Hyde, Beaufort, Jones, Greene, Craven, and Pamlico Counties; and
- c. One in the southeast, covering New Hanover, Robeson, Brunswick, Carteret, Onslow, Lenoir, Pender, Duplin, Bladen, and Columbus Counties."

Requested by: Representatives Gardner, Hayes, Senators Martin of Guilford, Hartsell

EXTEND CABARRUS COUNTY AFDC AND FOOD STAMP WORKFARE PILOT PROGRAM

Sec. 24.16A. Chapter 368 of the 1995 Session Laws reads as rewritten:

"Section 1. Notwithstanding any law to the contrary, the Department of Human Resources shall designate Cabarrus County as a pilot county for the purpose of conducting a demonstration Workfare Program for certain Aid to Families with Dependent Children (AFDC) and Food Stamp recipients. Immediately upon the ratification of this act, the Department shall seek all federal waivers necessary to allow this demonstration program. To the extent that this act or the program established pursuant to it conflicts with any State law, the program supersedes that law.

Sec. 2. (a) The Cabarrus County demonstration Workfare Program for certain AFDC and Food Stamp recipients shall:

- (1) Provide job opportunities to all able-bodied AFDC and Food Stamp recipients who:
 - a. Are not eligible for the JOBS program;
 - b. Are between the ages of 18 and 64;
 - c. Are not caring for a child under one year of age;
 - d. Are working less than 30 hours per week; and
 - e. Are not full-time high school students or the equivalent;
- (2) Create job opportunities in the public, the private, nonprofit, and the private, for-profit sector, primarily in the human services areas by allowing Cabarrus County to use grant diversions, consisting of the AFDC benefits and the cash value of Food Stamps that would be paid to otherwise eligible recipients to match employer funds, to subsidize the employment of these recipients. Human service area jobs will meet such socially necessary needs as day care work, nursing home aide work, and in-home aide work;
- (3) Allow wages paid to these recipients, which contain grant-diverted funds, to be exempt from income for purposes of determining eligibility for assistance;

- (4) Structure payment of wages to these recipients such that they will be considered income, in order to make recipients eligible for the federal earned income tax credit;
 - (5) Create work experience opportunities in the private sector more realistically to reflect the world of work;
 - (6) Require these recipients to participate in the development of an opportunity contract, outlining the responsibilities of the recipient and agency, as well as the incentives for compliance and the sanctions for noncompliance;
 - (7) Require all these recipients who participate in the program to pursue and accept employment, full or part time, subsidized or unsubsidized, as a condition for continued eligibility for AFDC and Food Stamp assistance;
 - (8) Require job search training of all participants;
 - (9) Require monitored job search of all participants until employment is found or until other work activities of up to 40 hours per week are in place;
 - (10) Provide child care by allowing Cabarrus County to use grant diversions, consisting of the Family Support Act child day care subsidies that would be paid to otherwise eligible recipients, and transportation as required;
 - (11) Create a positive work incentive by providing wage incentives to participants who are in compliance with the program, equal to the first thirty dollars (\$30.00) and one-third of the remainder of monthly gross income for a period of up to two years;
 - (12) Provide enhanced Food Stamp benefits after participants are employed and are in program compliance by using the thirty dollar (\$30.00) and one-third of the remainder wage incentive as an income exemption;
 - (13) Provide time-limited sanctions, or withholding of benefits for the adult members of the household of all AFDC and Food Stamp benefits for noncompliance, beginning with the first sanction period equal to the time necessary to come into compliance, second sanction period -- four months, third and subsequent sanctions -- eight months; and
 - (14) Provide automatic Medicaid coverage for children and pregnant adults of sanctioned families by transferring the children administratively to the Medicaid for Indigent Children (MIC) Program and by transferring the pregnant adults administratively to the Medicaid for Pregnant Women (MPW) Program.
- (b) An adjunct program to the demonstration program prescribed in subsection (a) of this section shall:
- (1) Require AFDC recipients who are mandated JOBS participants to pursue and accept employment, full or part time, subsidized or unsubsidized, as part of their job plan. The maximum number of hours delegated to job activities, including employment, shall be 40 hours per week. AFDC recipients who are JOBS eligible and who are caring for children under five years of age shall, in this program, not be limited to 20 hours per week;

- (2) Require AFDC recipients who are potential JOBS participants to engage in job search until either employment is found or they become JOBS eligible; and
- (3) Ensure that sanctions for noncompliance and provision of Medicaid coverage shall be as provided in subdivisions (13) and (14) of subsection (a) of this section.

Sec. 3. This act shall be funded by Cabarrus County using the grant diversions and administrative transfers prescribed in Section 2 of this act, together with federal and State administrative funding allocated to Cabarrus County for the public assistance and JOBS programs.

Sec. 4. The Department of Human Resources shall evaluate the Cabarrus County Demonstration Project and report to the General Assembly on or before ~~March 1, 1997~~, May 1, 1998.

Sec. 5. This act becomes effective July 1, 1995 and shall expire on ~~July 1, 1997~~, January 1, 1999."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
MEDICAL DATA PROCESSING FUNDS

Sec. 24.16B. The sum of one hundred fifty thousand dollars (\$150,000) for the 1996-97 fiscal year is transferred from the Insurance Regulatory Fund established pursuant to G.S. 58-6-25 to the Division of Facility Services, Department of Human Resources, to certify statewide data processors pursuant to Article 11A of Chapter 131E of the General Statutes, to purchase data from statewide data processors, and to process and analyze the data.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
RURAL COMMUNITY AND MIGRANT HEALTH CENTERS' PARTICIPATION IN STATE CONTRACT PURCHASING

Sec. 24.17. G.S. 143-49(6) reads as rewritten:

"(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources, to private nonprofit agencies licensed or approved by the Department of Human Resources as child placing agencies or agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission."

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

REDUCE DHR FUNDS IN ANTICIPATION OF RECEIPT OF FEDERAL FUNDS

Sec. 24.18. Section 23 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23. (a) Funds appropriated to the Department of Human Resources for the 1995-96 fiscal year have been reduced by fourteen million thirteen thousand three hundred ninety-six dollars (\$14,013,396) in anticipation of the receipt of federal funds from the Title IV A - Emergency Assistance Program and the Social Services Block Grant. If these federal funds are not received or if only a portion of these funds are received, notwithstanding ~~G.S. 143-15.3~~, G.S. 143-23, the Director of the Budget may use funds available to the Department, not to exceed fourteen million thirteen thousand three hundred ninety-six dollars ~~(\$14,013,393)~~, (\$14,013,396). The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations prior to any such transfer.

(b) Funds appropriated to the Department of Human Resources for the 1996-97 fiscal year have been reduced by fifteen million two hundred fifty-two thousand two hundred ninety-two dollars (\$15,252,292) in anticipation of the receipt of federal funds from the Title IV A - Emergency Assistance Program. If these federal funds are not received or if only a portion of these funds are received, notwithstanding G.S. 143-23, the Director of the Budget may use funds available to the Department, not to exceed fifteen million two hundred fifty-two thousand two hundred ninety-two dollars (\$15,252,292). The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations prior to any such transfer.

(c) Funds appropriated for the biennium for the Social Services Block Grant were reduced for local departments of social services for the 1995-96 fiscal year and for the 1996-97 fiscal year in anticipation of the receipt of federal funds from the Title IV A - Emergency Assistance Program. If these reductions are not made up with federal funds received in the 1996-97 fiscal year or if only a portion of these funds are received, notwithstanding G.S. 143-23, the Director of the Budget may use funds available, not to exceed twelve million one hundred fifty thousand dollars (\$12,150,000) to make up the reductions for local departments of social services. The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations prior to any such transfer."

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
DHR RESOURCE STUDIES EXTENDED

Sec. 24.19. Section 23.6B of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.6B. The Department shall study the following two issues and shall report these two issues, together with any recommendations, to the 1995 General Assembly, Regular Session 1996, ~~within one week of convening~~. General Assembly by December 1, 1996:

- (1) The average staff vacancy rate by division over the last five fiscal years, to determine its effect on lapsed salaries; and
- (2) An analysis of unbudgeted revenues in excess of revenues in the certified budget as amended by the General Assembly received by the Department in the last two fiscal years, including:
 - a. Indirect cost receipts; and
 - b. Prior year earned revenue."

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

PLAN FOR REORGANIZATION OF THE DEPARTMENT OF HUMAN RESOURCES

Sec. 24.20. (a) The General Assembly intends to reorganize the Department of Human Resources, in consultation with the Office of State Budget and Management and the Department of Human Resources, to provide an alternative and improved approach to the organization and delivery of human services in North Carolina.

(b) There is established the Independent Study Commission on the Reorganization of the Department of Human Resources.

(c) The Commission shall be composed of 16 members, 15 voting and one nonvoting, as follows:

- (1) Five members of the House of Representatives at the time of their appointment, two appointed by the Speaker of the House of Representatives, one other a chair of the House Appropriations Subcommittee on Human Resources, one other a member of the House Appropriations Subcommittee on Human Resources, and one other the House of Representatives chair or other member of the Subcommittee on Human Resources of the Joint Legislative Commission on Governmental Operations;
- (2) Five members of the Senate at the time of their appointment, two appointed by the President Pro Tempore of the Senate, one other the chair of the Senate Appropriations Subcommittee on Human Resources, one other a member of the Senate Appropriations Subcommittee on Human Resources, and one other the Senate chair or other member of the Subcommittee on Human Resources of the Joint Legislative Commission on Governmental Operations;
- (3) Five public members appointed by the Governor, including one who shall be a county commissioner at the time of appointment, selected from a list of four candidates nominated by the North Carolina Association of County Commissioners; and
- (4) The Secretary of the Department of Human Resources or a designee, who shall be a nonvoting member.

(d) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a legislative member from their respective chambers to serve as cochair of the Commission.

(e) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any

time upon the joint call of the cochaIRS. The Commission may meet in the Legislative Building or the Legislative Office Building.

(f) Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 or Chapter 138 of the General Statutes, as appropriate.

(g) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional and clerical staff to staff the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission or committee, upon the direction of the Legislative Services Commission. The expenses relating to professional and clerical employees supplied through the Legislative Services Commission shall be borne by the Legislative Services Commission.

Notwithstanding any Legislative Services Office policy to the contrary, the Commission may meet during the 1997 Session of the General Assembly, and legislative staff may serve the Commission during this session.

(h) When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

(i) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

(j) The Commission shall contract with an independent management consulting firm to develop a reorganization plan, including an implementation component. Because time is of the essence, if the Commission is not appointed by August 15, 1996, the Division of Fiscal Research may begin the contracting process, including the development of Requests for Proposals. The Division shall consult with the Office of State Budget and Management and the Department of Human Resources in this process.

(k) The contract shall provide that the plan shall be designed to meet the following goals:

- (1) The achievement of family-centered services;
- (2) The identification of gaps in services across special needs groups;
- (3) The improvement of access to and the reduction of fragmentation of services and programs;
- (4) The enhancement of accountability;
- (5) The provision of leadership at the State level for local government; and
- (6) The definition of and delineation between State and local roles and responsibilities.

(l) The contract shall provide that the plan propose an organizational structure designed around the following guiding principles:

- (1) The facilitation of a holistic approach to the delivery of services and programs;
- (2) The provision of a core set of programs and services common to all special needs groups;

- (3) The effective delivery of programs and services, including:
 - a. Coordinated planning;
 - b. Evaluation of results;
 - c. Independent regulatory and licensing functions;
 - d. Centralized administrative support; and
- (4) The inclusion of consideration of funding sources in decision making regarding programs and services.

(m) The Commission shall provide any additional contract specifications and directions it considers necessary.

(n) The independent management consultant that is awarded the contract shall report to the Commission as the Commission considers appropriate and shall submit a final report to the Commission by March 1, 1997. While conducting its work, the independent management consultant shall devise a means of obtaining confidential input from managerial and nonmanagerial human services personnel, such as through the establishment of a confidential, temporary hotline.

(o) The Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly by April 1, 1997, at which time the Commission shall terminate.

(p) Of the funds appropriated to the Department of Human Resources, the sum of five hundred thousand dollars (\$500,000) is transferred to the General Assembly to implement this section, including to fund the contract required.

Requested by: Representatives Gardner, Hayes, Senator Martin of Guilford
**DHR REPORT ON PLANS FOR IMPLEMENTING DYS
COMPREHENSIVE STUDY RECOMMENDATIONS**

Sec. 24.21. The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations by October 1, 1996, on its plans for implementing the recommendations of the Comprehensive Study of the Division of Youth Services.

Requested by: Senators Martin of Guilford, Lucas, Representatives Gardner, Nye, Russell

**STUDY COURT-ORDERED COUNTY PAYMENT OF JUVENILE
TREATMENT**

Sec. 24.21A. (a) The Division of Youth Services, Department of Human Resources, and the Administrative Office of the Courts shall study county payment of the cost of medical, surgical, psychiatric, psychological, or other treatment of juveniles ordered pursuant to G.S. 7A-647 when the parents are not able to pay the cost of treatment. The study shall provide recommendations on the feasibility and desirability of allowing the counties to present evidence of their financial status in each case and of requiring the State to pay the cost of treatment of juveniles in counties that are not able to pay the cost of treatment.

(b) The Division of Youth Services and the Administrative Office of the Courts shall report the results of this study and its recommendations to the Chairs of the House and Senate Appropriations Committees and the Chairs of the House and Senate Appropriations Subcommittees on the

Department of Human Resources and on Justice and Public Safety by December 1, 1996.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

**S.O.S. AND FAMILY RESOURCE CENTER GRANT PROGRAMS
ADMINISTRATIVE COST LIMITS**

Sec. 27.19. Section 23.6 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.6. (a) Of the funds appropriated to the Department of Human Resources in this act, the Department may use up to a total of three hundred fifty thousand dollars (\$350,000) each fiscal year of the biennium to administer the S.O.S. Program, to provide technical assistance to applicants and to local S.O.S. programs, and to evaluate the local S.O.S. programs. The Department may contract with appropriate public or nonprofit agencies to provide the technical assistance, including training and related services.

(b) Of the funds appropriated in this act to the Department of Human Resources for the Family Resource Center Grant Program, the Department may use up to three hundred thousand dollars (\$300,000) ~~each fiscal year of the biennium~~ for the 1995-96 fiscal year and two hundred fifty thousand dollars (\$250,000) for the 1996-97 fiscal year to administer the Program."

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

**OFFICE OF ECONOMIC OPPORTUNITY, SUPPORT OUR STUDENTS
PROGRAMS' LOCATION**

Sec. 24.23. The Department of Human Resources shall ensure that the Office of Economic Opportunity remains in the Office of the Secretary and that the Support Our Students Program remains in the Division of Youth Services.

Requested by: Representatives Russell, Pate, Pulley, Sherrill, Gardner, Nye, Senators Martin of Guilford, Lucas

DHR POSITION ELIMINATION SPECIFICATIONS

Sec. 24.24. (a) The Department of Human Resources shall ensure that the elimination of positions, other than those that are mental health institutionally based, in the 1996-97 fiscal year, targeted by the Department, as referenced in the Current Operations Appropriations Act of 1996, or in the Conference Report incorporated into the Act, be effected as follows:

- (1) All vacant positions targeted for elimination shall be eliminated effective July 1, 1996; and
- (2) All filled positions targeted for elimination shall be eliminated effective November 1, 1996, except for filled positions targeted for elimination in the Office of the Controller, which positions shall be eliminated on or before December 31, 1996.

The Department of Human Resources shall not eliminate any position prescribed by this subsection that it targeted but that was not referenced as eliminated in the Current Operations Appropriations Act of 1996 or in the Conference Report incorporated into the Act. In order to comply with State

Personnel Commission policy and in order to protect filled positions, the Department may substitute vacant positions or filled positions other than mental health institutionally based filled critical positions whose incumbents volunteer for discontinued service allowance for filled positions targeted for elimination.

(b) The Department of Human Resources shall further ensure that the elimination of the 130.5 mental health institutionally based positions be effected according to the following priority:

- (1) First, from vacant, noncritical positions, which positions shall be eliminated effective July 1, 1996;
- (2) Then, from vacant, critical positions, which positions shall be eliminated effective July 1, 1996; and
- (3) Then, from filled, noncritical positions, which positions shall be eliminated effective November 1, 1996.

The Department shall not eliminate any mental health institutionally based filled critical positions. For purposes of this section, a critical position is one that provides or is engaged in direct contact with clients on an ongoing basis and a noncritical position is any other position.

Requested by: Representatives Gardner, Hayes, Howard, Berry, Senator Martin of Guilford

FOOD STAMP ELECTRONIC BENEFITS TRANSFER FUNDS SPECIFICATION

Sec. 24.25. Funds appropriated to the Controller's Office, Department of Human Resources, for the Food Stamp Electronic Benefits Transfer Program (EBT) shall remain in the Controller's Office and shall not be transferred to any other office or division within the Department.

The Controller's Office, Department of Human Resources, may proceed with statewide implementation of the Food Stamp EBT Program.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Cochrane, Lucas

IN-HOME AIDE FUNDS

Sec. 24.26. Section 23.11D of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 23.11D. Of the funds appropriated to the Division of Aging, Department of Human Resources, in this act, the sum of five hundred thousand dollars (\$500,000) for the 1995-96 fiscal year and the sum of ~~five hundred thousand dollars (\$500,000)~~ five million five hundred thousand dollars (\$5,500,000) for the 1996-97 fiscal year shall be allocated via the Home and Community Care Block Grant and ~~used to fund in-home aide services and caregiver support services.~~ for home and community care services for older persons who are not eligible for Medicaid and who are on the waiting list for these services. These funds shall be used only for direct services. Service recipients shall pay for services based on their income in accordance with G.S. 143B-181.1(a)(10)."

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

ADULT CARE HOME REIMBURSEMENT RATE/ADULT CARE HOME ALLOCATION OF NONFEDERAL COST OF MEDICAID PAYMENTS

Sec. 24.26A. (a) Section 23.10 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 23.10. (a) Effective July 1, 1995, the maximum monthly rate for residents in adult care home facilities shall be nine hundred seventy-five dollars (\$975.00) per month for ambulatory residents and one thousand seventeen dollars (\$1,017) per month for semiambulatory residents.

(b) Effective August 1, 1995, the maximum monthly rate for residents in adult care home facilities shall be eight hundred forty-four dollars (\$844.00) per month per resident.

(c) Effective August 1, 1995, the Department of Human Resources may use the remaining funds available from the State/County Special Assistance appropriation to provide:

- (1) Needed Medicaid-covered services, specifically one hour of personal care services per day to all Medicaid-eligible residents and a maximum of 50 additional hours per month of personal care services for residents who require heavy care;
- (2) Funds to the area mental health authorities to provide wraparound services for adult home care residents with mental health conditions;
- (3) Funds for the implementation of the provisions of G.S. 131D-4.1 and G.S. 131D-4.2, including funds for necessary additional staff.

(d) The eligibility of Special Assistance recipients residing in adult care homes on August 1, 1995, shall not be affected by an income reduction in the Special Assistance eligibility criteria resulting from adoption of the Rate Setting Methodology Report and Related Services, providing these recipients are otherwise eligible.

(e) Effective August 1, 1995, the State shall pay fifty percent (50%) and the county shall pay fifty percent (50%) of the nonfederal costs of Medicaid services paid to adult care home facilities. As Medicaid personal care requirements increase, the county matching share shall be capped until it equals fifteen percent (15%) of the nonfederal Medicaid personal care requirements.

(f) To maximize Medicaid funding, the Department of Human Resources may take the temporary measures necessary to implement Medicaid funding during the period from August 1, 1995, through September 30, 1995. This authorization includes authorization to continue payment of State/County Assistance at the July 1995 rates until the Health Care Financing Administration approval of Medicaid personal care services with future recoupment from providers of an amount equal to the difference between the July 1995 rates and the August 1995 rates.

(g) Effective July 1, 1996, the maximum monthly rate for residents in adult care home facilities shall be eight hundred seventy-four dollars (\$874.00) per month per resident."

(b) The Aging Study Commission shall study the issue of adult care home reimbursement rates, including the issue of staff incentive grants, and the issue of mandatory staff/resident ratios and shall report the results of this

study, together with any recommendations, in its report to the 1997 General Assembly.

Requested by: Senators Martin of Guilford, Lucas, Representatives Gardner, Hayes, Nye, Russell

FIRE PROTECTION REVOLVING LOAN FUND

Sec. 24.26B. (a) Chapter 122A of the General Statutes is amended by adding a new section to read:

"§ 122A-5.13. Adult Care Home, Group Home, and Nursing Home Fire Protection Fund authorized; authority.

(a) The North Carolina Housing Finance Agency shall establish an Adult Care Home, Group Home, and Nursing Home Fire Protection Fund (hereinafter 'Fire Protection Fund') to assist owners of adult care homes, group homes for developmentally disabled adults, and nursing homes with the purchase and installation of fire protection systems in existing and new adult care homes, group homes for developmentally disabled adults, and nursing homes. The Fire Protection Fund shall be a revolving fund.

(b) The Agency, in consultation with the Department of Human Resources, shall adopt rules for the management and use of the Fire Protection Fund. These rules at a minimum shall provide for the following:

- (1) Financial incentives for owners of facilities who utilize Fire Protection Fund monies to install sprinkler systems instead of smoke detection equipment.
- (2) Maximum loan amounts of one dollar and seventy-five cents (\$1.75) per square foot for advanced smoke detectors and digital communication equipment, three dollars and seventy-five cents (\$3.75) per square foot for residential sprinkler systems, and six dollars (\$6.00) per square foot for institutional sprinkler systems.
- (3) Interest rates from three percent (3%) to six percent (6%) for a period not to exceed 20 years for sprinkler systems and 10 years for smoke detection systems.
- (4) Documentary verification that owners of facilities obtain fire protection systems at a reasonable cost.
- (5) Acceleration of a loan when statutory fire protection requirements are not met by the facility for which the loan was made.
- (6) Loan approval priority criteria that considers the frailty level of residents at a facility.
- (7) Loan origination and servicing fees."

(b) Proceeds from the Fire Protection Fund created in this act may be used to provide staff support to the North Carolina Housing Finance Agency for loan processing and to the Department of Human Resources for review and approval of fire protection plans and inspection of fire protection systems.

(c) The North Carolina Housing Finance Agency shall, by October 1, 1996, adopt temporary rules to implement this section.

(d) Of the funds appropriated to the Department of Human Resources in this act, the sum of one million dollars (\$1,000,000) shall be transferred to the North Carolina Housing Finance Agency to fund the Fire Protection Fund.

Requested by: Representatives Gardner, Nye, Russell, Shubert, Senators Martin of Guilford, Lucas

CHILD DAY CARE SUBSIDIES

Sec. 24.26C. (a) The maximum gross annual income for initial eligibility, adjusted biennially, for subsidized child care services shall be seventy-five percent (75%) of the State median income, adjusted for family size.

(b) Parents who receive child care subsidy to work, look for work, attend work-related training or education activities, or meet the special developmental needs of their child, shall share in the cost of child care. No fees shall be charged to the client when child day care services are provided to the individuals in the following circumstances:

- (1) When children are receiving day care services in conjunction with protective services as described in 10 NCAC 35E.0106, up to a maximum of 12 months from the time protective services are initiated;
- (2) When day care services are provided as a support to a child receiving Child Welfare Services as described in the North Carolina Division of Social Services Family Services Manual, Volume 1, Chapter II; or
- (3) When a child with no income is living with someone other than the child's biological or adoptive parent or is living with someone who does not have court-ordered financial responsibility.

(c) The amount of the fees charged to the client shall be in accordance with the fee determination process and established schedules adopted by the Social Services Commission and published by the Division of Child Development. Fees shall be established based on a percent of gross family income and adjusted for family size. Fees shall be determined as follows:

FAMILY SIZE	PERCENT OF GROSS FAMILY INCOME
1-3	9%
4-5	8%
6 or more	7%

Local departments of social services shall apply this new fee schedule to recipients at the next eligibility review on or after the effective date of this section.

(d) The monthly schedule of payments for the purchase of child day care services for low-income children from providers who have fifty percent (50%) or more children receiving child care subsidized with State or federal funds include:

- (1) Provision of payment rates for child care that are tied to the provider's regulatory status as follows:
 - a. Registered homes and "A" licensed centers receive the market rate or the rate they charge their full fee-paying parents, whichever is lower;
 - b. "AA" licensed centers receive one hundred ten percent (110%) of the market rate or the rate they charge their full fee-paying parents, whichever is lower; and

- c. Unregistered providers receive fifty percent (50%) of the market rate or the rate they charge their full fee-paying parents, whichever is lower.

(2) Provision of payment rates for child care providers in counties who do not have at least 75 children in each age group for center-based and home-based care as follows:

- a. Payment rates shall be set at the statewide market rate for registered homes and "A" licensed centers.
- b. If it can be demonstrated that the application of the statewide market rate to a county with fewer than 75 children in each age group is lower than the county market rate and would inhibit the ability of the county to purchase child care for low-income children, then the county market rate may be applied.

(e) Payment rates described in subdivision (1) of subsection (d) of this section shall be applied to all licensed child care centers, including Head Start, that have fifty percent (50%) or more of enrolled children receiving child care subsidies, and to registered family child care homes and unregulated providers that enroll subsidized children.

(f) The Department may seek the necessary waivers to extend the Family Support Act Transitional Child Care to two-year coverage in order to maximize federal funds.

(g) This section becomes effective September 1, 1996.

Requested by: Representatives Gardner, Nye, Russell, Senators Martin of Guilford, Lucas

ALLOCATION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE EXPANSION FUNDS

Sec. 24.27. Of the funds appropriated in this act to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, for expansion of mental health, developmental disabilities, and substance abuse programs and services, other than crisis services, those funds needed by area authorities for "catch-up" purposes shall be allocated pursuant to the Incentive Method adopted by the Mental Health Study Commission and presented in the Commission's Report to the 1996 General Assembly. The Department, in conjunction with all stakeholders, and in consultation with the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services, shall work together to develop a needs-based approach for the allocation of future expansion funds. The Department shall report on the recommended approach to the 1997 General Assembly by March 1, 1997.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas

CONSIDERATION OF PRIVATIZATION OF RICHMOND COUNTY BOUNDOVER DETENTION FACILITY

Sec. 24.28. The Department of Human Resources may solicit bids to determine whether privatization of the operation of the Richmond County Bouncover Unit, designed to serve a small but special population of juveniles being held for trial in superior court as adults, would result in

savings to the State. If the Department considers that it is in the best interest of the State to do so, the Department may proceed with the privatization.

If the Department does proceed with the privatization, the Department shall request that the contractor give priority employment opportunity to the State employees in the current filled 15 positions scheduled to be reassigned to Richmond from the Pitt Detention Center.

Requested by: Representatives Gardner, Hayes, Nye, Russell, Senators Martin of Guilford, Lucas, Cooper

EARLY CHILDHOOD INITIATIVES

Sec. 24.29. (a) Notwithstanding any provision of Part 10B of Article 3 of Chapter 143B of the General Statutes or any other provision of law or policy, including Part 27A of Chapter 324 of the 1995 Session Laws, the Department of Human Resources and the North Carolina Partnership for Children, Inc., jointly shall ensure that all of the recommendations contained in the State of North Carolina Smart Start Performance Audit, prepared pursuant to Section 27A(1)b. of Chapter 324 of the 1995 Session Laws, are implemented by July 1, 1997, together with any specific modification to any recommendations made in this subsection or elsewhere in this section. The Partnership shall report quarterly to the Joint Legislative Commission on Governmental Operations on its progress towards full implementation. The Department shall report to the Commission by February 1, 1997, on any changes that must be made to Part 10B of Article 3 of Chapter 143B of the General Statutes or to any other statutes or rules to make the implementation of the Smart Start Performance Audit recommendations a permanent part of the law.

The Early Childhood Education and Development Initiatives Program shall not be continued or expanded after the 1996-97 fiscal year until the 1997 General Assembly determines, after consideration of the reports submitted to the Joint Legislative Commission on Governmental Operations prescribed by this section, that the Program, both at the State and local levels, is operating as efficiently as possible and is producing the results for which it was established.

The following recommendations of the Smart Start Performance Audit are modified as follows:

- (1) The recommended administrative start-up cost allowance allowed for local partnerships shall apply only in the first year each partnership provides direct services;
- (2) The recommended determination as to whether local partnerships' contractors that receive \$25,000 or more have complied with financial audit requirements shall be made by the Partnership rather than the State Auditor; and
- (3) The recommendation that the Director of the Division of Child Development be an ex officio member of the Partnership shall not be implemented.

The following shall be studied by the Department and by the Partnership and presented, together with any recommended changes, to the

Joint Legislative Commission on Governmental Operations by February 1, 1997:

- (1) Regionalization of the local partnerships, specifically, development of a plan to regionalize the local partnerships, including incentives for regionalization of existing local partnerships as well as for newly applying partnerships;
- (2) The administrative cost formulas referenced in the Smart Start Performance Audit;
- (3) The definition of in-kind contributions and the matching requirements referenced in the Smart Start Performance Audit; and
- (4) Transportation.

(b) G.S. 143B-168.12(a) reads as rewritten:

"(a) In order to receive State funds, the following conditions shall be met:

- (1) ~~Members of the Board of Directors shall consist~~ The North Carolina Partnership shall have a Board of Directors consisting of the following 39 members:
 - a. The Secretary of Human Resources, ex officio;
 - b. The Secretary of Environment, Health, and Natural Resources, ex officio;
 - c. The Superintendent of Public Instruction, ex officio;
 - d. The President of the Department of Community Colleges, ex officio;
 - e. One resident from each of the 1st, 3rd, 5th, 7th, 9th, and 11th Congressional Districts, appointed by the President Pro Tempore of the Senate;
 - f. One resident from each of the 2nd, 4th, 6th, 8th, 10th, and 12th Congressional Districts, appointed by the Speaker of the House of Representatives;
 - g. Seventeen members, of whom four shall be members of the party other than the Governor's party, appointed by the Governor;
 - h. The President Pro Tempore of the Senate, or a designee;
 - i. The Speaker of the House of Representatives, or a designee;
 - j. The Majority Leader of the Senate, or a designee;
 - k. The Majority Leader of the House of Representatives, or a designee;
 - l. The Minority Leader of the Senate, or a designee; and
 - m. The Minority Leader of the House of Representatives, or a designee.
- (2) The North Carolina Partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.
- (3) The North Carolina Partnership shall oversee the development and implementation of the local demonstration projects as they are selected.

- (4) The North Carolina Partnership shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of State funds appropriated to it and to the local partnerships. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. The North Carolina Partnership may contract with outside firms to develop and implement the standard fiscal accountability plan. All local partnerships shall be required to participate in the standard fiscal accountability plan developed and adopted by the North Carolina Partnership pursuant to this subdivision.
- (5) The North Carolina Partnership shall develop and implement a centralized accounting and contract management system which incorporates features of the required standard fiscal accountability plan described in subdivision (4) of subsection (a) of this section. The following local partnerships shall be required to participate in the centralized accountability system developed by the North Carolina Partnership pursuant to this subdivision:
- a. Local partnerships which have significant deficiencies in their accounting systems, internal controls, and contract management systems, as determined by the North Carolina Partnership based on the annual financial audits of the local partnerships conducted by the Office of the State Auditor; and
 - b. Local partnerships which are in the first two years of operation following their selection. At the end of this two-year period, local partnerships shall continue to participate in the centralized accounting and contract management system. With the approval of the North Carolina Partnership, local partnerships may perform accounting and contract management functions at the local level using the standardized and uniform accounting system, internal controls, and contract management systems developed by the North Carolina Partnership.
- Local partnerships which otherwise would not be required to participate in the centralized accounting and contract management system pursuant to this subdivision may voluntarily choose to participate in the system. Participation or nonparticipation shall be for a minimum of two years, unless, in the event of nonparticipation, the North Carolina Partnership determines that any partnership's annual financial audit reveals serious deficiencies in accounting or contract management.
- (6) The North Carolina Partnership shall develop a formula for allocating direct services funds appropriated for this purpose to local partnerships.
- (7) The North Carolina Partnership may adjust its allocations on the basis of local partnerships' performance assessments. In determining whether to adjust its allocations to local partnerships, the North Carolina Partnership shall consider whether the local partnerships are meeting the outcome goals and objectives of the

North Carolina Partnership and the goals and objectives set forth by the local partnerships in their approved annual program plans.

The North Carolina Partnership may use additional factors to determine whether to adjust the local partnerships' allocations. These additional factors shall be developed with input from the local partnerships and shall be communicated to the local partnerships when the additional factors are selected. These additional factors may include board involvement, family and community outreach, collaboration among public and private service agencies, and family involvement.

On the basis of performance assessments, local partnerships annually shall be rated 'superior', 'satisfactory', or 'needs improvement'. Local partnerships rated 'superior' shall receive, to the extent that funds are available, a ten percent (10%) increase in their annual funding allocation. Local partnerships rated 'satisfactory' shall receive their annual funding allocation. Local partnerships rated 'needs improvement' shall receive ninety percent (90%) of their annual funding allocation.

The North Carolina Partnership may contract with outside firms to conduct the performance assessments of local partnerships.

- (8) The North Carolina Partnership shall establish a local partnership advisory committee comprised of 15 members. Eight of the members shall be chairs of local partnerships' board of directors, and seven shall be staff of local partnerships. Members shall be chosen by the Chair of the North Carolina Partnership from a pool of candidates nominated by their respective boards of directors. The local partnership advisory committee shall serve in an advisory capacity to the North Carolina Partnership and shall establish a schedule of regular meetings. Members shall serve two-year terms and may not serve more than two consecutive terms. Members shall be chosen from local partnerships on a rotating basis. The advisory committee shall annually elect a chair from among its members.

- (9) The North Carolina Partnership shall report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor on the ongoing progress of all the local partnerships' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide."

(c) G.S. 143B-168.13(a) reads as rewritten:

"(a) The Department shall:

- (1) Develop a statewide process, in cooperation with the North Carolina Partnership, to select the local demonstration projects. The first 12 local demonstration projects developed and implemented shall be located in the 12 congressional districts, one to a district. The locations of subsequent selections of local

demonstration projects shall represent the various geographic areas of the State.

- (2) ~~Develop, in cooperation with the North Carolina Partnership, Develop and conduct a statewide needs and resource assessment for each county. Of the funds appropriated to it to implement this Part, the Department may make available funds to each county for one year to an appropriate private nonprofit entity or to the county to perform this assessment, every third year, beginning in the 1997-98 fiscal year. This needs assessment shall be conducted in cooperation with the North Carolina Partnership and with the local partnerships. The data and findings of this needs assessment shall form the basis for annual program plans developed by local partnerships and approved by the North Carolina Partnership.~~
- (3) Provide technical and administrative assistance to local partnerships, particularly during the first year after they are selected under this Part to receive State funds. The Department, at any time, may authorize the North Carolina Partnership or a governmental or public entity to do the contracting for one or more local partnerships. After a local partnership's first year, the Department may allow the partnership to contract for itself.
- (4) Adopt, in cooperation with the North Carolina Partnership, any rules necessary to implement this Part, ~~including rules to ensure that no State funds or local funds used to supplant these State funds shall be used for personnel sick leave and annual leave benefits not allowed to State employees. Part, including rules to ensure that State leave policy is not applied to the North Carolina Partnership and the local partnerships.~~ In order to allow local partnerships to focus on the development of long-range plans in their initial year of funding, the Department may adopt rules that limit the categories of direct services for young children and their families for which funds are made available during the initial year.
- (5) ~~Report (i) quarterly to the Joint Legislative Commission on Governmental Operations and (ii) to the General Assembly and the Governor by April 1, 1994, and by March 1, 1995, on the ongoing results of all the local demonstration projects' work, including all details of the use to which the allocations were put, and on the continuing plans of the North Carolina Partnership and of the Department, together with legislative proposals, including proposals to implement the program statewide.~~
- (6) Annually update its funding formula using the most recent data available. These amounts shall serve as the basis for determining 'full funding' amounts for each local partnership."
- (d) (1) G.S. 143B-168.14(a) reads as rewritten:

"(a) In order to receive State funds, the following conditions shall be met:

- (1) Each local demonstration project shall be coordinated by a new local partnership responsible for developing a comprehensive, collaborative, long-range plan of services to children and families in the service-delivery area. The board of directors of each local

partnership shall consist of members including representatives of public and private nonprofit health and human service agencies, day care providers, the business community, foundations, county and municipal governments, local education units, and families. The Department, in cooperation with the North Carolina Partnership, may specify in its requests for applications the local agencies that shall be represented on a local board of directors. No existing local, private, nonprofit 501(c)(3) organization, other than one established on or after July 1, 1993, and that meets the guidelines for local partnerships as established under this Part, shall be eligible to apply to serve as the local partnership for the purpose of this Part.

- (2) Each local partnership shall agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the Department.
- (3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517.
- (4) Each local partnership shall participate in the uniform, standard fiscal accountability plan developed and adopted by the North Carolina Partnership."

(2) Local partnerships shall be in compliance with this subsection effective July 1, 1997.

(e) G.S. 143B-168.15 reads as rewritten:

"§ 143B-168.15. *Use of State funds.*

(a) State funds allocated to local projects for services to children and families shall be used to meet assessed needs, expand coverage, and improve the quality of these services. The local plan shall address the assessed needs of all children to the extent feasible. It is the intent of the General Assembly that the needs of both young children below poverty who remain in the home, as well as the needs of young children below poverty who require services beyond those offered in child care settings, be addressed. Therefore, as local partnerships address the assessed needs of all children, they should devote an appropriate amount of their State allocations, considering these needs and other available resources, to meet the needs of children below poverty and their families.

(b) Depending on local, regional, or statewide needs, funds may be used to support activities and services that shall be made available and accessible to providers, children, and families on a voluntary basis. Of the funds allocated to local partnerships that are designated by the Secretary for direct services, seventy-five percent (75%) shall be used for any one or more of the following activities and services:

- (1) Child day care services, including:
 - a. Child day care subsidies to reduce waiting lists;

- b. Raising the county child day care subsidy rate to the State market rate, if applicable, in return for improvements in the quality of child day care services;
 - c. Raising the income eligibility for child day care subsidies to seventy-five percent (75%) of the State median family income;
 - d. Start-up funding for child day care providers;
 - e. Assistance to enable child day care providers to conform to licensing and building code requirements;
 - f. Child day care resources and referral services;
 - g. Enhancement of the quality of child day care provided;
 - h. Technical assistance for child day care providers;
 - i. Quality grants for child day care centers or family child day care homes;
 - j. Expanded services or enhanced rates for children with special needs;
 - k. Head Start services;
 - l. Development of comprehensive child day care services that include child health and family support;
 - m. Activities to reduce staff turnover;
 - n. Activities to serve children with special needs;
 - o. Transportation services related to providing child day care services;
 - p. Evaluation of plan implementation of child day care services; and
 - q. Needs and resources assessments for child day care services.
- (2) Family- and child-centered services, including early childhood education and child development services, including:
- a. Enhancement of the quality of family- and child-centered services provided;
 - b. Technical assistance for family- and child-centered services;
 - c. Needs and resource assessments for family- and child-centered services;
 - d. Home-centered services; and
 - e. Evaluation of plan implementation of family- and child-centered services.
- (3) Other appropriate activities and services for child day care providers and for family- and child-centered services, including:
- a. Staff and organizational development, leadership and administrative development, technology assisted education, and long-range planning; and
 - b. Procedures to ensure that infants and young children receive needed health, immunization, and related services.
- (c) Long-term plans for local projects that do not receive their full allocation in the first year, other than those selected in 1993, should consider how to meet the assessed needs of low-income children and families within their neighborhoods or communities. These plans also should reflect a process to meet these needs as additional allocations and other resources are received.

(d) State funds designated ~~by the Secretary~~ for start-up and related activities may be used for capital expenses or to support activities and services for children, families, and providers. State funds designated ~~by the Secretary~~ to support ~~activities and direct~~ services for children, families, and providers shall not be used for major capital expenses unless the ~~Secretary~~ North Carolina Partnership approves this use of State funds based upon a finding that a local partnership has demonstrated that (i) this use is a clear priority need for the local plan, (ii) it is necessary to enable the local partnership to provide services and activities to underserved children and families, and (iii) the local partnership will not otherwise be able to meet this priority need by using State or federal funds available to that ~~county~~ local partnership. The funds approved for capital projects in any two consecutive fiscal years may not exceed ten percent (10%) of the total funds for direct services allocated to a local partnership in those two consecutive fiscal years.

(e) State funds allocated to local partnerships shall not supplant current expenditures by counties on behalf of young children and their families, and maintenance of current efforts on behalf of these children and families shall be sustained. State funds shall not be applied without the Secretary's approval where State or federal funding sources, such as Head Start, are available or could be made available to that county.

(f) Local partnerships may carry over funds from one fiscal year to the next, subject to the following conditions:

(1) Local partnerships in their first year of receiving direct services funding may, on a one-time basis only, carry over any unspent funds to the subsequent fiscal year.

(2) Any local partnership may carry over any unspent funds to the subsequent fiscal year, subject to the limitation that funds carried over may not exceed the increase in funding the local partnership received during the current fiscal year over the prior fiscal year.

(g) Not less than thirty percent (30%) of each local partnership's direct services allocation shall be used to expand child day care subsidies. To the extent practicable, these funds shall be used to enhance the affordability, availability, and quality of child day care services as described in this section."

(f) Section 27A of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 27A. Notwithstanding any other provision of law, the Early Childhood Education and Development Initiatives, under Part 10B of Article 3 of Chapter 143B of the General Statutes, are subject to the following terms and conditions for the 1995-97 fiscal biennium:

(1) Accountability.

The intent of the General Assembly is to strengthen the accountability of the Department of Human Resources, the North Carolina Partnership for Children, Inc., and the local partnerships in the expenditure of public funds and achievement of Program goals for the Early Childhood Education and Development Initiatives Program, as authorized under Part 10B of Article 3 of Chapter 143B of the General

Statutes. The importance of education as a part of all initiatives in this Program shall be emphasized.

In order to accomplish this level of accountability, the Joint Legislative Commission on Governmental Operations shall, consistent with current law, be the legislative oversight body for the Program. The President Pro Tempore of the Senate and the Speaker of the House of Representatives may appoint a subcommittee of the Joint Legislative Commission on Governmental Operations to carry out this function. This subcommittee may conduct all initial reviews of plans, reports, and budgets relating to the Program and shall make recommendations to the Joint Legislative Commission on Governmental Operations.

- a. Existing Partnerships - Local partnerships receiving State funds shall submit a Certification Annual Report on April 1 of each year to the North Carolina Partnership for Children, Inc., the Joint Legislative Commission on Governmental Operations, or any committee designated by Joint Legislative Commission on Governmental Operations. Administrative costs shall be equivalent to, on an average statewide basis for all local partnerships, not more than eight percent (8%) of the total statewide allocation to all local partnerships. Quality incentive grants as prescribed in the Smart Start Performance Audit recommendations shall be administered at the partnership level. A definition of administrative costs shall be determined by the independent firm selected under sub-subdivision b. of this subdivision.
- b. Program Audit - The Joint Legislative Commission on Governmental Operations shall select an independent firm recognized in performance auditing to conduct an independent performance audit of the first two years of operations of the 24 existing partnerships and of the administration of the Program by the Department of Human Resources. The audit's directives shall be determined by the Joint Legislative Commission on Governmental Operations and the independent firm. An interim program and performance audit report shall be submitted to the Joint Legislative Commission on Governmental Operations by January 1, 1996, and a final program and performance audit report shall be submitted to the Joint Legislative Commission on Governmental Operations by April 1, 1996. A definition of administrative costs shall be determined by the independent firm. Only in-kind contributions that are quantifiable, as determined by the independent firm, may be applied to the in-kind match requirement. The match requirement in subdivision (3) of this section shall be studied by the independent firm and recommendations for revision, if any, shall be reported to the Joint Legislative Commission on Governmental Operations.

- c. ~~The North Carolina Partnership for Children, Inc., shall continue to make quarterly reports to the Joint Legislative Commission on Governmental Operations as provided for in G.S. 143B-168.13(5).~~
- d. ~~New partnerships~~ Partnerships - In subsequent fiscal biennia, any new local partnership, before receiving State funds, shall be required to submit a detailed plan for expenditure of State funds for appropriate programs to the North Carolina Partnership for Children, Inc., and the Joint Legislative Commission on Governmental Operations for approval in April of the fiscal year in which the local partnership received planning funds. State funds to implement the programs shall not be allocated to the local partnership until the program plan is approved by the North Carolina Partnership for Children, Inc., after consultation with the Joint Legislative Commission on Governmental Operations. After receipt of initial program funds, local partnerships shall then be required to submit annual Certification Reports as provided for in sub-subdivision a. of this subdivision.
- e. Contracting for Services - The North Carolina Partnership for Children, Inc., and all local Partnerships shall use competitive bidding practices in contracting for goods and services on all contract amounts of \$1,500 and above, and where practicable, for amounts of less than \$1,500.
- f. Role of North Carolina Partnership for Children, Inc. - The role of the North Carolina Partnership for Children, Inc., shall be expanded to incorporate all the aspects of the new role prescribed for the Partnership in the Smart Start Performance Audit recommendations and to provide technical assistance to local partnerships, assess outcome goals for children and families, ensure that statewide goals and legislative guidelines are being met, help establish policies and outcome measures, obtain non-State resources for early childhood and family services, and document and verify the cumulative contributions received by the partnerships.

(2) Funding.

- a. ~~Existing partnerships~~ Partnerships - All 24 local partnerships that received State funds during the 1993-95 biennium shall receive their State funds proposed for the 1995-96 fiscal year. Existing partnerships shall file budgets and plans for review by the North Carolina Partnership for Children, Inc. Funds for the 1996-97 fiscal year shall be available after the Joint Legislative Commission on Governmental Operations has reviewed the independent evaluation discussed in sub-subdivision (1)b. of this subdivision, and the Partnership has approved these plans and budgets in consultation with the Joint Legislative Commission on Governmental Operations. These 24 partnerships shall be required to submit a Certification

Annual Report as provided in sub-subdivision a. of subdivision (1) of this ~~section~~, subsection beginning in April 1997.

- b. ~~New partnerships~~ Partnerships - Funds for planning, up to a maximum of \$3,500,000, may be made available to the ~~42~~ new partnerships in the 1995-96 fiscal year out of the continuation monies designated for the program. If the performance audit report is determined to be satisfactory to the Joint Legislative Commission on Governmental Operations, funding and other recommendations for expansion shall be made to the General Assembly by the Joint Legislative Commission on Governmental Operations for the 1996-97 fiscal year.
- c. Department of Human Resources; State-level administrative funding in the 1995-96 fiscal year and the 1996-97 fiscal year - Of the funds appropriated to the Department of Human Resources for Early Childhood Education and Development Initiatives for the 1995-97 fiscal biennium:
 1. No funds shall be used for State education technology;
 2. The Department of Human Resources shall receive \$500,000 for the 1995-96 fiscal year and ~~\$250,000~~ \$500,000 for the 1996-97 fiscal year for State administration;
 3. The Joint Legislative Commission on Governmental Operations shall receive \$500,000 for the 1995-96 fiscal year for the independent performance audit contract; ~~and~~
 4. Funding for the North Carolina Partnership for Children, Inc., shall be \$700,000 for ~~each fiscal year of the biennium~~, the 1995-96 fiscal year and shall be \$1,700,000 for the 1996-97 fiscal year; and
 5. Funding for the Frank Porter Graham Child Development Center's evaluation of the Early Childhood Education and Development Initiatives shall be increased to \$850,000 for the 1996-97 fiscal year.

(3) Matching requirement.

The North Carolina Partnership for Children, Inc., and all local partnerships shall, in the aggregate, be required to match no less than 50% of the total amount budgeted for the Early Childhood Education and Development Initiatives in each fiscal year of the biennium as follows: contributions of cash equal to at least ten percent (10%) and in-kind donated resources equal to no more than ten percent (10%) for a total match requirement of twenty percent (20%) for each fiscal year. Only in-kind contributions that are quantifiable, as determined by the independent auditing firm, shall be applied to the in-kind match requirement.

Failure to obtain a twenty percent (20%) match by May 1 of each fiscal year shall result in a proportionate reduction in the appropriation for the Early Childhood Education and Development Initiatives Program for the next fiscal year. The North Carolina Partnership for Children, Inc., shall be

responsible for compiling information on the private cash and in-kind contributions into a report that is submitted to the Joint Legislative Commission on Governmental Operations pursuant to G.S. 143B-168.13(5) in a format that allows verification by the Department of Revenue. The same match requirements shall apply to any expansion funds appropriated by the General Assembly."

(g) Article 12I of Chapter 120 of the General Statutes is repealed.

(h) Section 23.13 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 23.13. Counties participating in the Early Childhood Education and Development Initiatives authorized by Part 10B of Article 3 of Chapter 143B of the General Statutes may use the county's allocation of State and federal child care funds to subsidize child care according to the county's Early Childhood Education and Development Initiatives Plan as approved by the Department of Human Resources, North Carolina Partnership for Children, Inc. The use of federal funds shall be consistent with the appropriate federal regulations. Day care providers shall, at a minimum, comply with the applicable requirements for State licensure or registration pursuant to Article 7 of Chapter 110 of the General Statutes, with other applicable requirements of State law or rule, including rules adopted for nonregistered day care by the Social Services Commission, and with applicable federal regulations."

(i) Notwithstanding any policy to the contrary, the Frank Porter Graham Child Development Center may use any method legally available to it to track children who are participating or who have participated in any Early Childhood Education and Development Initiative in order to carry out its ongoing evaluation of the Early Childhood Education and Development Initiatives Program.

(j) In addition to the specific changes set forth in subsections (b) through (i) of this section, the Department of Human Resources and the North Carolina Partnership also shall do the following:

- (1) Plan and prepare for effective Early Childhood Initiatives Program implementation in those counties not yet phased into the overall program.
- (2) Maintain the current State level of administrative support for the Early Childhood Initiatives Program for 1996-97.
- (3) Develop a statewide resource and referral database.
- (4) Continue the evaluation of the Early Childhood Initiatives Program by the Frank Porter Graham Child Development Center.

(k) There is allocated from the funds appropriated to the Department of Human Resources, Division of Child Development, in this act, the sum of ten million one hundred fifty thousand dollars (\$10,150,000) for the 1996-97 fiscal year, to be used as follows:

- (1) Of the 24 partnerships existing as of 1995-96, funds for direct services for the Mecklenburg County and Cumberland County partnerships shall be increased a total of \$1,400,000. The North Carolina Partnership, Inc. shall determine the relative proportion of this increased funding that the Mecklenburg County and

Cumberland County partnerships will receive. These funds shall be for expansion of programs, effective January 1, 1997;

- (2) For the new partnerships planned for as of 1995-96, funds shall be \$7,550,000. These funds shall be for expansion of programs, effective January 1, 1997; and
- (3) For the new partnerships planned for as of 1996-97, funds shall be \$1,200,000 for planning purposes.

Requested by: Representatives Gardner, Hayes, Howard, Berry, Nye, Russell, Senators Martin of Guilford, Lucas

AFDC FRAUD CONTROL PROGRAM/DEBT SETOFF/CLIENT PROTECTION

Sec. 24.30. (a) The Department of Human Resources, immediately, shall elect the optional Aid to Families with Dependent Children (AFDC) Fraud Control Program pursuant to 45 C.F.R. 235.112. This program is deemed to apply to Work First Cash Assistance, effective July 1, 1996, as well as to AFDC, pursuant to the federal waivers received by the Department of Human Resources on February 5, 1996.

(b) The Department of Human Resources shall award incentive bonuses to each county for each of the county's AFDC fraud and Work First Cash Assistance claims recouped pursuant to the AFDC Fraud Control Program. Each incentive bonus shall equal one-half of the State's distributive share of the total AFDC and Work First Cash Assistance benefit amount that was determined fraudulent and recouped pursuant to the AFDC Fraud Control Program.

(c) The Department of Human Resources, Division of Social Services, shall develop and implement a statewide automated system to track AFDC and Work First Cash Assistance fraud claims and collect such claims by any appropriate method, including debt setoff pursuant to Chapter 105A of the General Statutes.

- (d) G.S. 105A-2(1)r. reads as rewritten:

"r. The North Carolina Department of Human Resources when in the performance of its ~~intentional program violation~~ collection duties for intentional program violations and violations due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program ~~intentional program violation~~ collection functions.

The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it

seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, ~~or intentional failure to disclose a material fact; fact, or inadvertent household error;~~”.

(e) The Department of Human Resources shall ensure that persons charged with, or suspected of, AFDC fraud not be subjected to any of the following:

- (1) Coercion;
 - (2) Discrimination in targeting persons for civil action or criminal prosecution; or
 - (3) Civil investigation or civil action without being (i) properly informed as to those matters that might arise out of this investigation or action that might result in criminal prosecution and (ii) in such a case, being properly advised of their right not to incriminate themselves.
- (f) The Department shall fund this section from funds available to it.

Requested by: Senators Martin of Guilford, Lucas, Representatives Gardner, Nye, Russell, Berry, Howard

FOOD STAMP FELONY FRAUD

Sec. 24.31. (a) G.S. 108A-53(a), as amended by Section 19.5(n) of Chapter 507 of the 1995 Session Laws, reads as rewritten:

“(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which ~~he that person~~ is not entitled in the amount of ~~one thousand dollars (\$1,000)~~ four hundred dollars (\$400.00) or less shall be guilty of a Class 1 misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than ~~one thousand dollars (\$1,000)~~ four hundred dollars (\$400.00) shall be guilty of a Class I felony.”

(b) This section becomes effective December 1, 1996, and applies to offenses committed on or after that date.

Requested by: Representative Esposito, Senator Martin of Guilford

MEDICAID STUDY EXTENSION

Sec. 24.32. Section 23.5A(d) of Chapter 507 of the 1995 Session Laws reads as rewritten:

“(d) The task force shall report the results of its study, together with any legislative proposals and cost analyses, to the 1995 General Assembly, Regular Session 1996, within a week of its ~~convening or convening~~, to a special session of the 1995 General Assembly called to deal with federal

block grant funding ~~issues~~, issues, or to the 1997 General Assembly within a week of its convening."

PART 25. DEPARTMENT OF AGRICULTURE

Requested by: Representatives Mitchell, Weatherly, Miner, Senator Martin of Pitt

RELEASE THE STATE'S REVERSIONARY INTEREST IN THE PROPERTY OF FUQUAY-VARINA AMERICAN LEGION POST 116

Sec. 25.1. (a) The General Assembly finds:

- (1) On April 28, 1941, the United States deeded to the State Board of Education a parcel of land north of Fuquay-Varina in Wake County, that deed being recorded at Book 868, page 171, Wake County Registry, and that deed had a right of termination by the United States if the property was not used for facilities which further the rehabilitation or education of the rural people of North Carolina;
- (2) On April 1, 1949, as approved by the Council of State, the State of North Carolina deeded to trustees for the use and benefit of Fuquay Springs, North Carolina, Post 116 of the American Legion, the same parcel with the same covenant as to the use of the property, that deed being recorded at Book 1019, page 172, Wake County Registry; and
- (3) The Congress of the United States, in Private Law 428, approved by President Eisenhower on June 21, 1954, directed the Secretary of Agriculture to convey to those trustees by quitclaim deed its remaining interest in the property; and
- (4) By deed dated November 30, 1962, and recorded at Book 1533, page 54, Wake County Registry, the United States conveyed its remaining interest in the property to the North Carolina Rural Development Corporation, an agency of the State of North Carolina under G.S. 137-31.1; and
- (5) American Legion Post 116 of Fuquay-Varina desires to make improvements to the property, but financing such improvements is complicated by the restriction on the property.

(b) The State of North Carolina and the North Carolina Rural Rehabilitation Corporation shall convey to the grantees of the deed recorded at Book 1019, page 172, Wake County Registry, by quitclaim deed, all of the right, title, and interest they have retained in property deeded by the State of North Carolina, that deed being recorded at Book 1019, page 172, Wake County Registry.

Requested by: Representatives Mitchell, Weatherly, Senators Kerr, Martin of Pitt

REMOVE SUNSET FOR GRAPE GROWERS' EXCISE TAX DISTRIBUTION

Sec. 25.2. (a) Section 3 of Chapter 836 of the 1987 Session Laws reads as rewritten:

"Sec. 3. This act shall become effective August 1, 1987, and shall terminate June 30, 1997, 1987."

(b) Section 12(b) of Chapter 1036 of the 1987 Session Laws, as amended by Section 176(b) of Chapter 900 of the 1991 Session Laws, is repealed.

(c) This section is effective upon ratification.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
TIMBER RECEIPTS FOR CERTAIN CAPITAL PROJECTS

Sec. 25.3. The sum of one million three hundred seventy-six thousand dollars (\$1,376,000) shall be transferred from the Department of Agriculture's timber sales capital improvement account, established pursuant to G.S. 146-30, to the Department of Agriculture for the 1996-97 fiscal year and shall be used for the following capital improvement projects at research stations and State farms:

- (1) \$387,400 for an addition to the swine facility at the Cherry Farm Unit.
- (2) \$126,700 for a farm equipment shelter at the Cherry Farm Unit.
- (3) \$329,300 for a shop and storage facility at the Upper Coastal Plain Station.
- (4) \$106,900 for a dairy milking parlor at the Caswell Farm Unit.
- (5) \$132,300 for research plot land at the Upper Mountain Station.
- (6) \$150,000 for an irrigation system at the Mountain Station.
- (7) \$143,400 for an office building at the Oxford Station.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

CATTLE AND LIVESTOCK EXPOSITION FUNDS

Sec. 25.4. Section 40 of Chapter 769 of the 1993 Session Laws, as amended by subsection (b) of Section 24 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"Sec. 40. Any unencumbered funds that were appropriated to the Department of Agriculture for the 1994-95 fiscal year for planning the construction of the Cattle and Livestock Exposition Center ~~shall be and~~ placed in a reserve in the Department of Agriculture ~~until further allocated by the 1995 General Assembly, Regular Session 1996.~~ shall be transferred to the Office of State Budget and Management to be used for land acquisition, planning, and construction of the Cattle and Livestock Exposition Center. The Center will house livestock shows and exhibits, educational programs, and a laboratory for embryo transfer research, semen evaluation, and livestock blood work."

PART 26. DEPARTMENT OF COMMERCE

Requested by: Representatives Mitchell, Weatherly, Nichols, Baker, Senators Martin of Pitt, Jordan, Kerr

GLOBAL TRANSPARK AUTHORITY/AUDIT BY STATE AUDITOR

Sec. 26. G.S. 63A-23 reads as rewritten:

"§ 63A-23. *Annual and quarterly reports.*

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Local Government Commission. Each report shall be accompanied by an audit of its books and accounts. The audit shall be conducted by the State Auditor. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, audits shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Commission."

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
WORLD TRADE CENTER FUNDS

Sec. 26.1. Of the funds appropriated in this act to the Department of Commerce, the sum of two hundred thousand dollars (\$200,000) for the 1996-97 fiscal year shall be allocated to the World Trade Center North Carolina (WTCNC) to support international trade education programs for small and medium-sized businesses. The WTCNC shall report to the Joint Legislative Commission on Governmental Operations on the use of these funds on or before March 1 of each fiscal year, and more frequently as requested by the Commission.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Ballance, Jordan, Kerr

FUNDS FOR ECONOMIC DEVELOPMENT

Sec. 26.2. Of the funds appropriated in this act to the Department of Commerce, the sum of one million five hundred twenty-five thousand dollars (\$1,475,000) for the 1996-97 fiscal year shall be allocated as follows:

- (1) \$275,000 to the Land Loss Prevention Project, Inc., to provide free legal representation to low-income, financially distressed small farmers. The Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The Land Loss Prevention Project, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (2) \$145,000 to the North Carolina Coalition of Farm and Rural Families, Inc., for its Small Farm Economic Development Project. These funds shall be used to foster economic development within the State's rural farm communities by offering marketing and technical assistance to small and limited resource farmers. The North Carolina Coalition of Farm and Rural Families, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;

- (3) \$780,000 to the North Carolina Institute for Minority Economic Development, Inc., to foster minority economic development within the State through policy analysis, information and technical assistance, resource expansion and support of community-based demonstration initiatives. The North Carolina Institute for Minority Economic Development, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds; and
- (4) \$275,000 to the North Carolina Minority Support Center (formerly known as the Minority Credit Union Support Center) for technical assistance to community-based minority credit unions. The North Carolina Minority Support Center shall report to the Credit Union Division of the Department of Commerce and to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Department or the Commission, on the use of these funds.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt MCNC

Sec. 26.3. Section 25.9 of Chapter 324 of the 1995 Session Laws reads as rewritten:

"Sec. 25.9. (a) MCNC shall report on all of its programs including contractual services for Supercomputer and the Research and Education Network to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on or before March 1 of each fiscal year, and more frequently as requested by the Commission. The reports shall include information on the activities and accomplishments during the past fiscal year, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months. The report on the activities of the Supercomputer and the Research and Education Network program programs shall identify the users of the Supercomputer, users, the major projects conducted by the users, and the ~~potential~~ benefits of the projects.

(b) MCNC shall provide a report containing detailed budget information to the Office of State Budget and Management in the same manner as State departments and agencies in preparation for biennium budget requests. Specific salary information will be provided upon written request by the Chairs of the Joint Legislative Commission on Governmental Operations or the Chairs of the House Appropriations Subcommittee on Natural and Economic Resources and the Chairs of the Senate Appropriations Committee on Natural and Economic Resources.

(c) The funds appropriated in this act to MCNC shall be used as follows:

	FY 1995-96	FY 1996-97
Microelectronics Program	\$5,362,523	\$5,362,523 4,966,721
Supercomputer	9,576,319	9,576,319 798,275
Telecommunications	4,826,158	4,826,158 -0-

(d) Of the funds appropriated to MCNC for the Microelectronics Program, ~~five million three hundred sixty-two thousand five hundred twenty-three dollars (\$5,362,523) in each fiscal year~~ four million nine hundred sixty-six thousand seven hundred twenty-one dollars (\$4,966,721) for the 1996-97 fiscal year is contingent upon a dollar-for-dollar match in non-State funds.

(e) If MCNC finds it necessary to make changes in the program allocations specified in subsection (c) of this section, MCNC shall report such changes to the Joint Legislative Commission on Governmental Operations 30 days before the reallocation.

~~(f) Funds appropriated in this act to MCNC for Migration of Current Network to the North Carolina Information Highway System (NCIHS) shall be used as follows:~~

- ~~(1) To cover the costs of connecting and operating the North Carolina Research and Education Network through the North Carolina Information Highway so that universities and research centers will continue to have the capability currently available through the North Carolina Research and Education Network,~~
- ~~(2) For program support, and~~
- ~~(3) For MCNC to serve as gateway to the North Carolina Information Highway for the 18 sites. Funds transferred in this act from the Department of Commerce to the UNC Board of Governors shall be used for contracting the purchase of supercomputing and research and education networking services to continue the provision of these services at North Carolina universities and colleges.~~

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Ballance, Jordan, Kerr

ECONOMIC DEVELOPMENT FUNDS

Sec. 26.4. Section 25.4 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 25.4. (a) Definition. -- For purposes of this section, the term 'community development corporation' means a nonprofit corporation:

- (1) Chartered pursuant to Chapter 55A of the General Statutes;
- (2) Tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) Whose primary mission is to develop and improve low-income communities and neighborhoods through economic and related development;
- (4) Whose activities and decisions are initiated, managed, and controlled by the constituents of those local communities; and
- (5) Whose primary function is to act as deal-maker and packager of projects and activities that will increase their constituencies' opportunities to become owners, managers, and producers of small businesses, affordable housing, and jobs designed to produce positive cash flow and curb blight in the target community.

(b) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of ~~three million eight hundred thousand~~

~~dollars (\$3,800,000) for the 1995-96~~ two million seven hundred thousand dollars (\$2,700,000) for the 1996-97 fiscal year shall be placed in an Economic and Community Development Program Reserve. Funds shall be allocated from the Reserve by the Rural Economic Development Center, Inc. as follows:

- (1) \$1,350,000 for community development grants to support community development projects and activities within the State's minority communities. Any community development corporation as defined in this section is eligible to apply for funds. The Rural Economic Development Center shall establish performance-based criteria for determining which community development corporations will receive a grant and the grant amount. Funding will also be allocated to the North Carolina Association of Community Development Corporations, Inc. The Rural Economic Development Center, Inc., shall allocate these grant funds from the Economic and Community Development Program Reserve as follows:
 - a. \$900,000 for direct grants to the local community development corporations that have previously received State funds for this purpose to support operations and project activities,
 - b. \$250,000 for direct grants to local community development organizations that have not previously received State funds,
 - c. \$150,000 to the North Carolina Association of Community Development Corporations, Inc. to provide training, technical assistance, resource development, project assistance, and support for local community development corporations statewide, and
 - d. \$50,000 to the Rural Economic Development Center, Inc. to be used to cover expenses in administering this section;
- ~~(2) \$275,000 to the Minority Credit Union Support Center for technical assistance to community-based minority credit unions;~~
- (3) \$250,000 to the Microenterprise Loan Program to support the loan fund and operations of the Program;
- (4) ~~\$100,000~~ \$150,000 allocated as follows:
 - a. \$25,000 to the Opportunities Industrialization Center of Wilson, Inc., for its ongoing job training programs;
 - b. \$25,000 to Opportunities Industrialization Center, Inc., in Rocky Mount, for its ongoing job training programs;
 - c. \$25,000 to Pitt-Greenville Opportunities Industrialization Center, Inc. for its ongoing job training programs; and
 - d. \$25,000 to the Opportunities Industrialization Center of Lenoir, Greene, and Jones ~~Counties~~, Counties; and
 - e. \$50,000 to the Opportunities Industrialization Center of Elizabeth City, Inc.

Funds allocated pursuant to sub-subdivisions a. through d. of this subdivision shall be in addition to funds allocated pursuant to Section 25.12 of Chapter 324 of the 1995 Session Laws.

Reporting requirements of that section shall apply to all funds allocated under this subdivision; and

- (5) \$400,000 \$950,000 shall be used for a program to provide supplemental funding for matching requirements for economic development in economically depressed areas. The Center shall use the funds to make grants to local governments and nonprofit corporations to provide funds necessary to match federal grants or other grants for necessary economic development projects and activities in economically depressed areas. The grant recipients shall be selected on the basis of need; need. Of the funds allocated under this subdivision, the sum of up to one hundred fifty thousand dollars (\$150,000) shall be used to address potential and actual threats to the public health.
- (6) \$275,000 to the Land Loss Prevention Project, Inc., to provide free legal representation to low-income, financially distressed small farmers. The Land Loss Prevention Project, Inc., shall not use these funds to represent farmers who have income and assets that would make them financially ineligible for legal services pursuant to Title 45, Part 1611 of the Code of Federal Regulations. The Land Loss Prevention Project, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (7) \$245,000 to the North Carolina Coalition of Farm and Rural Families, Inc., for its Small Farm Economic Development Project. These funds shall be used to foster economic development within the State's rural farm communities by offering financial, marketing, and technical assistance to small and limited resource farmers. The North Carolina Coalition of Farm and Rural Families, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (8) \$780,000 to the North Carolina Institute for Minority Economic Development, Inc., to foster minority economic development within the State through policy analysis, information and technical assistance, resource expansion and support of community-based demonstration initiatives. The North Carolina Institute for Minority Economic Development, Inc., shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the use of these funds;
- (9) \$100,000 to the Lake Gaston Economic Development Corporation for planning and preliminary development of a conference center and related facilities for the Lake Gaston area; and
- (10) \$25,000 to the Roanoke-Chowan Community College for its sheltered workshop program.

(c) The Rural Economic Development Center, Inc. shall report to the Joint Legislative Commission on Governmental Operations on October 1 and March 1 of each fiscal year, and more frequently as requested by the Commission, on the uses of funds allocated pursuant to subdivisions (1), ~~(2), (3), (4), (5), (9), and (10)~~ (3), (4), and (5) of subsection (b) of this section."

Requested by: Senators Martin of Pitt, Kerr, Jordan, Representatives Mitchell, Weatherly

INDUSTRIAL DEVELOPMENT FUND UTILITY ACCOUNT

Sec. 26.5. (a) Of the funds appropriated in this act to the Department of Commerce for the 1996-97 fiscal year, the sum of two million dollars (\$2,000,000) shall be deposited to and used for the Utility Account established under G.S. 143B-437A(b1).

(b) In addition to the reporting requirements of G.S. 143B-437A, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

TECHNOLOGICAL DEVELOPMENT AUTHORITY FUNDS/INVESTMENT

Sec. 26.6. G.S. 96-5 is amended by adding the following new subsection to read:

"(g) Notwithstanding subsection (f) of this section, the State Treasurer may invest not more than a total of twenty-five million dollars (\$25,000,000) of funds in the Employment Security Commission Reserve Fund established under subsection (f) of this section in securities issued by the North Carolina Technological Development Authority, Inc., the proceeds for which are directed to support investment in venture capital funds. The State Treasurer shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on October 1 and March 1 of each fiscal year on investments made pursuant to this subsection."

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

CENTER FOR COMMUNITY SELF-HELP FUNDS

Sec. 26.7. (a) Of the funds appropriated in this act to the Department of Commerce, the sum of three million dollars (\$3,000,000) for the 1996-97 fiscal year shall be allocated to the Center for Community Self-Help to further a statewide program of lending for home ownership throughout North Carolina. These funds will be leveraged on a ten-to-one basis, generating at least ten dollars (\$10.00) of nontraditional home loans

for every one dollar (\$1.00) of State funds. Payments of principal shall be available for further loans or loan guarantees.

(b) The Center for Community Self-Help shall submit, within 180 days after the close of its fiscal year, audited financial statements to the State Auditor. All records pertaining to the use of State funds shall be made available to the State Auditor upon request. The Center for Community Self-Help shall make quarterly reports on the use of State funds to the State Auditor, in form and format prescribed by the State Auditor or his designee. The Center for Community Self-Help shall make a written report by May 1 of each year for the next three years to the General Assembly on the use of the funds allocated under this section.

(c) The Center for Community Self-Help shall report to the Joint Legislative Commission on Governmental Operations, the House Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Department of Commerce on a quarterly basis for the next three years.

(d) The Office of the State Auditor may conduct an annual end-of-year audit of the revolving fund for economic development lending created by this appropriation for each year of the life of the revolving fund.

(e) If the Center for Community Self-Help dissolves, the corporation shall transfer the remaining assets of the revolving fund to the State and shall refrain from disposing of the revolving fund assets without approval of the State Treasurer.

(f) The Department of Commerce shall disburse this appropriation within 15 working days of the receipt of a request for the funds from the Center for Community Self-Help. The request shall include a commitment of the leveraged funds by the Center for Community Self-Help or its affiliates.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

RURAL TOURISM DEVELOPMENT FUNDS

Sec. 26.8. (a) Of the funds appropriated in this act to the Department of Commerce for the 1996-97 fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be used for the Rural Tourism Development Grant Program. The Department shall establish and implement this Program to provide grants to local governments and nonprofit organizations to encourage the development of new tourism projects and activities in rural areas of the State. The Department shall develop procedures for the administration and distribution of funds allocated to the Rural Tourism Development Program under the following guidelines:

- (1) Eligible organizations shall make application under procedures established by the Department;
- (2) Eligible organizations shall be nonprofit tourism-related organizations located in the State's rural regions;
- (3) Priority shall be given to eligible organizations that have significant involvement of travel and tourism-related businesses;
- (4) Priority shall be given to eligible organizations serving economically distressed rural counties;

- (5) Priority shall be given to eligible organizations that match funds; and
- (6) Funds may not be used for renting or purchasing land or buildings, or for financing debt.

No recipient or new tourism project shall receive a total of more than fifty thousand dollars (\$50,000) of these grant funds for the 1996-97 fiscal year.

(b) Of the funds appropriated in this act from the General Fund to the Department of Commerce for the 1996-97 fiscal year, the sum of ten thousand dollars (\$10,000) shall be used to fund the 1996 Babe Ruth Regional All-Star Tournament.

Requested by: Representatives Mitchell, Weatherly, Senators Martin of Pitt, Jordan, Kerr

FUNDS FROM WORKER TRAINING TRUST FUND

Sec. 26.9. Notwithstanding G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1996-97 fiscal year for the following purposes:

- (1) \$218,500 to the Department of Commerce to be used for a computer system upgrade in the Division of Employment and Training in order to meet federal reporting requirements under the Job Training Partnership Act;
- (2) \$210,000 to the Department of Labor for a computer upgrade in the apprenticeship tracking system in order to meet federal reporting requirements under the Federal Apprenticeship Program;
- (3) \$90,000 to the Department of Labor to establish nationally certified dietary managers pilot projects. These projects will offer training programs to meet new federal regulations requiring a certified dietary manager on-site at every residential care facility in the State. Funds allocated under this subdivision may also be used to support other customized job training programs authorized by the Department; and
- (4) \$100,000 to the Department of Community Colleges for a training program in entrepreneurial skills to be operated by North Carolina REAL Enterprises. Funds appropriated under this subdivision are in addition to those appropriated for the same purpose under Section 25.9(d)(6) of Chapter 507 of the 1995 Session Laws.

Requested by: Senators Perdue, Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

EXTEND STATE PORTS STUDY COMMISSION

Sec. 26.10. (a) Section 16.1(e) of Chapter 542 of the 1995 Session Laws reads as rewritten:

"(e) The Commission shall report the results of its study and its recommendations to the ~~1995 General Assembly by May 1, 1996, General Assembly.~~ The Commission may make an interim report to the 1996 Regular Session of the 1995 General Assembly and shall make a final report upon the convening of the 1997 General Assembly. The Commission shall terminate upon filing of its final report."

(b) This section becomes effective April 30, 1996.

Requested by: Senators Plyler, Martin of Pitt, Jordan, Kerr,
Representatives Mitchell, Weatherly

INDUSTRIAL PARK/AUTHORITY

Sec. 26.11. Section 7 of Chapter 419 of the 1971 Session Laws, as rewritten by Section 2 of Chapter 342 of the 1995 Session Laws and Section 7 of Chapter 511 of the 1995 Session Laws, reads as rewritten:

"Sec. 7. Private property needed by said Airport Authority for any airport, industrial park, landing field or facilities of same may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of the power of eminent domain, pursuant to the provisions of Chapter 40A of the General Statutes of North Carolina, as amended. When the Airport Authority files a complaint to condemn property for a purpose authorized by this act, title to the property and the right to immediate possession of the property vests in the Airport Authority when the complaint is filed and the Airport Authority deposits the value of the property in accordance with G.S. 40A-41, ~~unless the owner of the property initiates an action for injunctive relief, G.S. 40A-41.~~"

PART 27. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

AGRICULTURE COST SHARE FUNDS FOR ANIMAL OPERATIONS LOCATED IN A RIVER BASIN OTHER THAN THE NEUSE RIVER BASIN

Sec. 27. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, Division of Soil and Water Conservation, for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the sum of five million seven hundred fifty thousand dollars (\$5,750,000) for the 1996-97 fiscal year shall be used to assist existing animal operations in obtaining approved animal waste management plans for those animal operations located, in whole or in part, in a county in one of the State's 17 river basins other than the Neuse River Basin and shall be used in accordance with G.S. 143-215.74(b), as amended by this act. When implementing this section, the Department shall cooperate with the Cooperative Extension Service, the Natural Resource Conservation Service of the United States Department of Agriculture, and the local Soil and Water Conservation Districts. Any of these funds remaining at the end of the 1996-97 fiscal year shall not revert, but shall remain available for use pursuant to this section.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

AGRICULTURE COST SHARE FUNDS FOR ANIMAL OPERATIONS LOCATED IN THE NEUSE RIVER BASIN

Sec. 27.1. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, Division of Soil and Water Conservation, for the Agriculture Cost Share Program for Nonpoint Source Pollution Control, the sum of one million seven hundred fifty thousand dollars (\$1,750,000) for the 1996-97 fiscal year shall be used to assist existing animal operations in obtaining approved animal waste management plans and farm operations in installing best management practices for those agriculture operations located, in whole or in part, in a county in the Neuse River Basin and shall be used in accordance with G.S. 143-215.74(b), as amended by this act. When implementing this section, the Department shall cooperate with the Cooperative Extension Service, the Natural Resource Conservation Service of the United States Department of Agriculture, and the local Soil and Water Conservation Districts. Any of these funds remaining at the end of the 1996-97 fiscal year shall not revert, but shall remain available for use pursuant to this section.

Requested by: Representatives Mitchell, Nichols, Weatherly, Senators Martin of Pitt, Jordan, Kerr

STATEWIDE TECHNICAL ASSISTANCE FOR ANIMAL WASTE MANAGEMENT PLANS

Sec. 27.2. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, Division of Soil and Water Conservation, the sum of one million one hundred sixty-seven thousand five hundred dollars (\$1,167,500) for the 1996-97 fiscal year shall be used to provide technical assistance to operators in the process of obtaining approved animal waste management plans for animal operations. When implementing this section, the Department shall cooperate with the Cooperative Extension Service, the Natural Resource Conservation Service of the United States Department of Agriculture, and the local Soil and Water Conservation Districts. Any of these funds remaining at the end of the 1996-97 fiscal year shall not revert, but shall remain available for use pursuant to this section.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

ODOR CONTROL TECHNOLOGY STUDY

Sec. 27.3. Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of six hundred thousand dollars (\$600,000) for the 1996-97 fiscal year shall be transferred to the Board of Governors of The University of North Carolina for the North Carolina Agricultural Research Service at North Carolina State University to conduct research into economically feasible odor control technologies and to provide detailed economic analysis of odor management alternatives; provided these funds are matched with an equal sum from private sources. No later than January 1, 1997, the Board of Governors shall report to the Environmental Review Commission and the Fiscal Research Division on progress under the research, including any findings and recommendations at that time.

Requested by: Senators Martin of Pitt, Plexico, Jordan, Kerr,
Representatives Holmes, Creech, Esposito, Mitchell, Weatherly, Nichols

WETLANDS RESTORATION PROGRAM/FUNDS

Sec. 27.4. (a) Article 21 of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"§ 143-214.8. Wetlands Restoration Program: established.

The Wetlands Restoration Program is established within the Department of Environment, Health, and Natural Resources. The Wetlands Restoration Program shall be developed by the Department as a nonregulatory statewide wetlands restoration program for the acquisition, maintenance, restoration, enhancement, and creation of wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities. The Wetlands Restoration Program shall consist of the following components:

- (1) Restoration and perpetual maintenance of wetlands.
- (2) Development of restoration plans.
- (3) Landowner contact and land acquisition.
- (4) Evaluation of site plans and engineering studies.
- (5) Oversight of construction and monitoring of restoration sites.
- (6) Land ownership and management.
- (7) Mapping, site identification, and assessment of wetlands functions.
- (8) Oversight of private wetland mitigation banks to facilitate the components of the Wetlands Restoration Program.

"§ 143-214.9. Wetlands Restoration Program: purposes.

The purposes of the program are as follows:

- (1) To restore wetlands functions and values across the State to replace critical functions lost through historic wetlands conversion and through current and future permitted impacts. It is not the policy of the State to destroy upland habitats unless it would further the purposes of the Wetlands Restoration Program.
- (2) To provide a consistent and simplified approach to address mitigation requirements associated with permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344.
- (3) To streamline the wetlands permitting process, minimize delays in permit decisions, and decrease the burden of permit applicants of planning and performing compensatory mitigation for wetlands losses.
- (4) To increase the ecological effectiveness of compensatory mitigation.
- (5) To achieve a net increase in wetland acres, functions, and values in each major river basin.
- (6) To foster a comprehensive approach to environmental protection.

"§ 143-214.10. Wetlands Restoration Program: development and implementation of basinwide restoration plans.

Develop Basinwide Restoration Plans. -- The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river

basins in the State. Beginning July 1, 1997, the Department shall develop and begin implementing a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water Quality.

"§ 143-214.11. Wetlands Restoration Program: compensatory mitigation.

(a) Definition. -- For purposes of this section, the term 'compensatory mitigation' means the restoration, creation, enhancement, or preservation of wetlands or other areas required as a condition of a section 404 permit issued by the United States Army Corps of Engineers.

(b) Department of Environment, Health, and Natural Resources to Coordinate Compensatory Mitigation. -- All compensatory mitigation required by permits or authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 shall be coordinated by the Department consistent with the basinwide plans for wetlands restoration and rules developed by the Environmental Management Commission. All compensatory wetlands mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans.

(c) Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. -- The emphasis of mitigation is on replacing functions within the same river basin unless it is demonstrated that restoration of other areas would be more beneficial to the overall purposes of the Wetlands Restoration Program.

(d) Compensatory Mitigation Options Available to Applicant. -- An applicant may satisfy compensatory wetlands mitigation requirements by the following actions, if those actions are consistent with the basinwide restoration plans and also meet or exceed the requirements of the United States Army Corps of Engineers:

- (1) Payment of a fee established by the Department into the Wetlands Restoration Fund established in G.S. 143-214.12.
- (2) Donation of land to the Wetlands Restoration Program or to other public or private nonprofit conservation organizations as approved by the Department.
- (3) Participation in a private wetlands mitigation bank.
- (4) Preparing and implementing a wetlands restoration plan.

(e) Payment Schedule. -- A standardized schedule of per-acre payment amounts shall be established by the Environmental Management Commission. The monetary payment shall be based on the ecological functions and values of wetlands permitted to be lost and on the cost of restoring or creating wetlands capable of performing the same or similar functions, including directly related costs of wetlands restoration planning, long-term monitoring, and maintenance of restored areas.

(f) Mitigation Banks. -- State agencies and private mitigation banking companies shall demonstrate that adequate, dedicated financial surety exists to provide for the perpetual land management and hydrological maintenance of lands acquired by the State as mitigation banks, or proposed to the State as privately operated and permitted mitigation banks.

"§ 143-214.12. Wetlands Restoration Program: Wetlands Restoration Fund.

(a) Wetlands Restoration Fund. -- The Wetlands Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Wetlands Restoration Fund shall provide a repository for monetary contributions and donations or dedications of interests in real property to promote projects for the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for payments made in lieu of compensatory mitigation as described in subsection (b) of this section. No funds shall be expended from this Fund for any purpose other than those directly contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of wetlands and riparian areas in accordance with the basinwide plan as described in subsection (a) of this section.

(b) Authorized Methods of Payment. -- A person subject to a permit or authorization issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344, may contribute to the Wetlands Restoration Program, to comply with conditions to, or terms of, the permit or authorization, if participation in the Wetlands Restoration Program will meet the mitigation requirements of the United States Army Corps of Engineers. The Department shall, at the discretion of the applicant, accept payment into the Wetlands Restoration Fund in lieu of other compensatory mitigation requirements of any authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the mitigation requirements of the United States Army Corps of Engineers. Payment may be made in the form of monetary contributions according to a fee schedule established by the Environmental Management Commission or in the form of donations of real property provided that the property is approved by the Department as a suitable site consistent with the basinwide wetlands restoration plan.

(c) Accounting of Payments. -- The Department shall provide an itemized statement that accounts for each payment into the Fund. The statement shall include the expenses and activities financed by the payment.

"§ 143-214.13. Wetlands Restoration Program: reporting requirement.

The Department of Environment, Health, and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the Wetlands Restoration Program and its use of the funds in the Wetlands Restoration Fund. The report shall document statewide wetlands losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Wetlands Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's Wetland Restoration Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly."

(b) G.S. 143B-282(a)(1) is amended by adding the following:

"u. To administer the State's authority under 33 USC § 1341 of the federal Clean Water Act."

(c) The Department of Environment, Health, and Natural Resources is directed to negotiate and enter into a Memorandum of Agreement with the United States Army Corps of Engineers regarding the restoration, creation, enhancement, and preservation of wetlands and the compensatory mitigation required of permit applicants under 33 U.S.C. § 1344. The purpose of the Memorandum of Agreement is to ensure that the State's implementation of the Wetlands Restoration Program with regard to mitigation of wetlands satisfies the United States Army Corps of Engineers and that the standards developed by the State to which the State's and other mitigation banks must adhere is acceptable to the Corps for purposes of section 404 mitigation requirements.

(d) Of the funds appropriated to the Department of Environment, Health, and Natural Resources, the sum of five hundred thousand dollars (\$500,000) in recurring funds for the 1996-97 fiscal year shall be allocated to support eight staff positions and for administrative and other expenses to implement the Wetlands Restoration Program.

(e) The Environmental Review Commission shall study private mitigation banks. In its study the Environmental Review Commission shall compare private mitigation banks with the Wetlands Restoration Program and may also consider any additional issues relevant to those topics. The Environmental Review Commission shall report to the 1997 General Assembly regarding its findings and recommendations.

Requested by: Senators Basnight, Perdue, Odom, Plyler, Martin of Pitt, Jordan, Kerr, Representatives Holmes, Creech, Esposito, Mitchell, Weatherly, Nichols

CLEAN WATER MANAGEMENT TRUST FUND

Sec. 27.6. (a) Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 13A.

"Clean Water Management Trust Fund.

"§ 113-145.1. Purpose.

The General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted. The task of cleaning up polluted waters and protecting the State's water resources is multifaceted and requires different approaches that take into account the problems, the type of pollution, the geographical area, and the recognition that the hydrological and ecological values of each resource sought to be upgraded, conserved, and protected are unique.

It is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters, including urban drinking water supplies. It is the further intent of the General Assembly that moneys from the Fund also be used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. While the purpose of this Article is to focus on the cleanup and prevention of pollution of the State's surface

waters and the establishment of a network of riparian buffers and greenways, the General Assembly believes that the results of these efforts will also be beneficial to wildlife and marine fisheries habitats.

"§ 113-145.2. Definitions.

As used in this Article:

- (1) Council. -- The advisory council for the Clean Water Management Trust Fund.
- (2) Economically Distressed Units of Local Government. -- Counties designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A and any cities located in those counties.
- (3) Fund. -- The Clean Water Management Trust Fund created pursuant to this Article.
- (4) Land. -- Real property and any interest in, easement in, or restriction on real property.
- (5) Trustees. -- The trustees of the Clean Water Management Trust Fund.

"§ 113-145.3. Clean Water Management Trust Fund: established.

(a) Fund Established. -- There is established a Clean Water Management Trust Fund in the State Treasurer's Office that shall be used to finance projects to clean up or prevent surface water pollution in accordance with this Article.

(b) Fund Earnings, Assets, and Balances. -- The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. -- Moneys from the Fund may be used for any of the following purposes:

- (1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
- (2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies.
- (3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
- (4) To restore previously degraded lands to reestablish their ability to protect water quality.
- (5) To repair failing waste treatment systems if: (i) an application has first been submitted to receive a loan or grant from the Clean Water Revolving Loan and Grant Fund and the application was denied during the latest review cycle; (ii) the repair is a reasonable remedy for resolving an existing waste treatment problem; and (iii) the repair is not for the purpose of expanding the system to

accommodate future anticipated growth of a community. Priority shall be given to economically distressed units of local government.

- (6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand waste treatment systems if the system is being expanded as a remedy to eliminate failing septic tank systems or illegal drainage connections. Priority shall be given to economically distressed units of local government.

- (7) To improve stormwater controls and management practices.

- (8) To facilitate planning that targets reductions in surface water pollution.

- (9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. -- No more than two percent (2%) of the annual balance of the Fund on July 1 or a total sum of eight hundred fifty thousand dollars (\$850,000), whichever is less, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff.

"§ 113-145.4. Clean Water Management Trust Fund: eligibility for grants; matching funds or property requirement.

(a) Eligible Grant Applicants. -- Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.

- (2) A local government or other political subdivision of the State or a combination of such entities.

- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, and restoration of our State's environmental and natural resources.

(b) Grant Matching Requirement. -- The Board of Trustees shall establish matching requirements for grants awarded under this Article. The Board of Trustees may require a match of up to twenty percent (20%) of the amount of the grant awarded. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(c) Grants Not Available to Satisfy Compensatory Mitigation Requirements. -- No grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S.143-214.11.

"§ 113-145.5. Clean Water Management Trust Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.

(a) Board of Trustees Established. -- There is established the Clean Water Management Trust Fund Board of Trustees. The Clean Water Management Trust Fund Board of Trustees shall be independent, but for administrative purposes shall be located under the Department of Environment, Health, and Natural Resources.

(b) Membership. -- The Clean Water Management Trust Fund Board of Trustees shall be composed of 18 members. Six members shall be appointed by the Governor, six by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and six by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution.

Persons appointed shall be knowledgeable in one of the following areas:

- (1) Acquisition and management of natural areas.
- (2) Conservation and restoration of water quality.
- (3) Wildlife and fisheries habitats and resources.
- (4) Environmental management.

(c) Initial Appointments. -- Each appointing officer shall designate two of the officer's initial appointments to serve two-year terms, two to serve four-year terms, and two to serve six-year terms. Thereafter, all appointments shall be for four years, subject to reappointment. All initial appointments shall be made on or before January 1, 1997. The Governor shall appoint one Trustee to serve as Chair of the Board.

(d) Vacancies. -- If a vacancy occurs, other than by the expiration of term, of a member subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives or the President Pro Tempore of the Senate, the vacancy shall be filled in accordance with G.S. 120-122. All other vacancies shall be filled by the appointing official in the original manner.

(e) Frequency of Meetings. -- The Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(f) Per Diem and Expenses. -- The Trustees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund.

(g) Meeting Facilities. -- The Secretary of the Department of Environment, Health, and Natural Resources shall provide meeting facilities for the Board of Trustees and its staff as requested by the Chair.

"§ 113-145.6. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Grant Funds. -- The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. -- The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

- (1) The significant enhancement and conservation of water quality in the State.
- (2) The objectives of the basinwide management plans for the State's river basins and watersheds.

- (3) The promotion of regional integrated ecological networks insofar as they affect water quality.
- (4) The specific areas targeted as being environmentally sensitive.
- (5) The geographic distribution of funds as appropriate.
- (6) The preservation of water resources with significant recreational or economic value and uses.
- (7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(c) Develop Additional Guidelines. -- The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. -- The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. -- The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. -- The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. -- The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority.-- The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

"§ 113-145.7. Clean Water Management Trust Fund: Executive Director and staff.

The Clean Water Management Trust Fund Board of Trustees, as soon as practicable after its organization, shall select and appoint a competent person in accordance with this section as Executive Director of the Clean Water Management Trust Fund Board of Trustees. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Trustees and shall serve as the chief administrative officer of the Trustees. Subject to the approval of the Trustees and the Director of the Budget, the Executive Director may employ such clerical and other assistants as may be deemed necessary.

The person selected as Executive Director shall have had training and experience in conservation, protection, and management of surface water resources. The salary of the Executive Director shall be fixed by the Trustees, and the Executive Director shall be allowed travel and subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary

and expenses shall be paid from the Fund. The term of office of the Executive Director shall be at the pleasure of the Trustees.

"§ 113-145.8. Clean Water Management Trust Fund: Advisory Council.

There is established the Clean Water Management Trust Fund Advisory Council. The Council shall advise the Trustees with regard to allocations made from the Fund, and other issues as requested by the Trustees. The Council shall be composed of the following or its designees:

- (1) Commissioner of Agriculture.
- (2) Chair of the Wildlife Resources Commission.
- (3) Secretary of the Department of Environment, Health, and Natural Resources.
- (4) Secretary of the Department of Commerce."

(b) Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-15.3B. The Clean Water Management Trust Fund.

(a) The Clean Water Management Trust Fund is established in G.S. 113-145.3. The State Controller shall reserve to the Clean Water Management Trust Fund six and one-half percent (6.5%) of any unreserved credit balance remaining in the General Fund at the end of each fiscal year. As used in this section, the term 'unreserved credit balance' means the credit balance amount, as determined on a cash basis, before funds are reserved by the State Controller to the Savings Reserve Account, the Repairs and Renovations Reserve Account, or the Clean Water Management Trust Fund pursuant to this section, G.S. 143-15.3, and G.S. 143-15.3A.

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with Article 13A of Chapter 113 of the General Statutes."

(c) The Chair of the Board of Trustees of the Clean Water Management Trust Fund shall report to the Environmental Review Commission beginning November 1, 1996, and annually thereafter on implementation of this section. A written copy of the report shall also be sent to the Fiscal Research Division of the General Assembly beginning November 1, 1996, and annually thereafter on implementation of this section.

(d) For the 1996-97 fiscal year only, of the funds reserved under G.S. 143-15.3B to the Clean Water Management Trust Fund, the State Controller shall transfer the sum of nine million two hundred thousand dollars (\$9,200,000) to the Wetlands Restoration Fund to be used to implement the Wetlands Restoration Program. The 1997 General Assembly shall review and consider further funding needs of the Wetlands Restoration Program and the Wetlands Restoration Fund for the 1997-98 fiscal year and subsequent years.

(e) This section becomes effective June 30, 1996.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

STUDY GROUNDWATER IMPACTS OF LAGOONS

Sec. 27.7. Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of three hundred seventy-five thousand dollars (\$375,000) for the 1996-97 fiscal year

shall be transferred to the Board of Governors of The University of North Carolina to be used by the North Carolina Agricultural Research Service at North Carolina State University to design and implement a scientifically based study for the purpose of determining the extent to which animal waste lagoons pose a threat, if any, to the groundwater of the State. Lagoons that are representative of soil types and hydrologic conditions in North Carolina shall be selected for this study. No later than January 1, 1997, the Board of Governors of The University of North Carolina shall report to the Environmental Review Commission and the Fiscal Research Division on progress under the research, including any findings and recommendations at that time.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

LOWER NEUSE RIVER BASIN ASSOCIATION FUNDS

Sec. 27.8. (a) Of the funds appropriated by this act to the Lower Neuse River Basin Association for the 1996-97 fiscal year, the sum of two million dollars (\$2,000,000) shall be allocated as grants to local government units in the Neuse River Basin to assist those local government units in fulfilling their obligations under the Neuse River Nutrient Sensitive Waters Management Strategy plan adopted by the Environmental Management Commission. The funds are contingent upon the adoption of the plan by the Environmental Management Commission. If the Environmental Management Commission fails to adopt the plan by June 30, 1997, then the funds shall revert to the General Fund.

(b) The Lower Neuse River Basin Association shall report by October 15, 1996, and quarterly thereafter to the Environmental Review Commission regarding the grants awarded and the effectiveness of the projects funded by those grants in reducing the pollution in the Neuse River Basin. The Lower Neuse River Basin Association shall also send a written copy of its report to the Fiscal Research Division of the General Assembly.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

STUDY OF ATMOSPHERIC DEPOSITION OF NITROGEN IN NEUSE ESTUARY

Sec. 27.9. (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of four hundred fifty thousand dollars (\$450,000) for the 1996-97 fiscal year shall be transferred to the Board of Governors of The University of North Carolina for the North Carolina Agricultural Research Service at North Carolina State University to be used to contract with a research institution to research and perform computer modelling to identify the amount of atmospheric nitrogen reaching the Neuse estuary, to enable the development of strategies to reduce the most significant sources of nitrogen, and to improve water quality. If the expertise required for this research is available at a research institution in the State, the Board of Governors shall contract with a research institution in the State. No later than January 1, 1997, the Board of Governors shall report to the Environmental Review Commission

and the Fiscal Research Division on progress under the research, including any findings and recommendations at that time.

(b) The Board of Governors of The University of North Carolina and the research institution with which it enters a contract shall collaborate and work cooperatively with the Department of Environment, Health, and Natural Resources in implementing subsection (a) of this section.

(c) Funds not expended or encumbered under subsection (a) of this section shall revert at the end of the 1997-98 fiscal year.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
TRANSFER THE GEODETIC SURVEY SECTION TO THE OFFICE OF STATE PLANNING

Sec. 27.9A. The 22 positions, support, and equipment in the Geodetic Survey Section of the Division of Land Resources, Department of Environment, Health, and Natural Resources, shall be moved to the Office of State Planning in the Office of the Governor.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
HAZARDOUS WASTE REPORTS

Sec. 27.10. Beginning in 1997, the Department of Environment, Health, and Natural Resources shall report on the generation, storage, treatment, and disposal of hazardous waste in North Carolina no more often than it is required to report under federal law or federal regulation.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
DRINKING WATER WAIVER PROGRAM

Sec. 27.11. The Department of Environment, Health, and Natural Resources, Division of Environmental Health, shall establish a drinking water waiver program that will enable the Division to seek and qualify for additional waivers from the drinking water regulations of the United States Environmental Protection Agency. The program shall include, but not be limited to, the collection and study of data on the State's drinking water testing program to determine which contaminants do not present a significant health risk and which water systems are not susceptible to particular contaminants. The Division shall report its progress in establishing and implementing the drinking water waiver program not later than December 15, 1996, to the Fiscal Research Division, the Environmental Review Commission, and the Legislative Research Commission Study Committee on Water Issues.

Requested by: Representatives Mitchell, Weatherly, Tolson, Nichols, H. Hunter, Senators Martin of Pitt, Kerr, Jordan

STUDY ENVIRONMENTAL IMPACTS OF ABANDONED LAGOONS/ANIMAL FACILITIES

Sec. 27.12. Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of twenty-five thousand dollars (\$25,000) for the 1996-97 fiscal year shall be placed in a reserve in the Department for the General Assembly for a legislative study commission to study the environmental impacts of animal waste lagoons and

animal facilities that have been closed or abandoned or are inactive in order to determine the extent and scope of the problems, if any, associated with these structures, to identify potential solutions for any existing problems, to identify scientifically and environmentally effective methods of closure for these structures in the future, and to determine the advisability of providing incentives for the proper management of abandoned animal waste lagoons and abandoned animal facilities. No later than January 1, 1997, this study commission shall report to the 1997 General Assembly, the Environmental Review Commission, and the Fiscal Research Division on its findings, recommendations, and any legislative proposals.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

RESERVE FOR PERMITTING AND INSPECTING ANIMAL WASTE MANAGEMENT SYSTEMS

Sec. 27.13. (a) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one million five hundred fifty thousand seven hundred sixty-six dollars (\$1,550,766) shall be placed in a reserve to be used to establish and support positions to conduct permitting, inspection, and enforcement activities for animal waste management systems. These funds shall be used as follows:

- (1) \$704,473 in recurring funds shall be used to establish and support 14 positions in the Division of Soil and Water Conservation; and
- (2) \$846,293 in recurring funds shall be used to establish and support 18 positions in the Division of Water Quality.

When implementing this section, the Department shall cooperate with the Cooperative Extension Service, the Natural Resources Conservation Service of the United States Department of Agriculture, and the local Soil and Water Conservation Districts.

(b) No later than October 15, 1996, and quarterly thereafter, the Department of Environment, Health, and Natural Resources shall submit status reports to the Environmental Review Commission and the Fiscal Research Division. Each report shall include, but not be limited to:

- (1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report and a total for that calendar year.
- (2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation has conducted since the last report and a total for that calendar year.
- (3) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation since the last report and a total for that calendar year.
- (4) The number of compliance inspections of animal waste management systems that the Division of Water Quality has conducted since the last report and a total for that calendar year.
- (5) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water Quality since the last report and a total for that calendar year.

- (6) The average length of time for each category of reviews and inspections under subdivisions (2) through (4) of this subsection.
- (7) The number of violations found during each category of review and inspection under subdivisions (2) through (4) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.
- (c) The information to be included in the reports pursuant to subsection (b) of this section shall be itemized by each regional office of the Department, with totals for the State indicated.
- (d) Fees collected pursuant to G.S. 143-215.10G shall not be used by the department to cover the cost of this program, but shall be credited to the General Fund as nontax revenue.

Requested by: Representatives Mitchell, Weatherly, H. Hunter, Senator Martin of Pitt

HEALTHY START FOUNDATION FUNDS

Sec. 27.14. Section 26.4 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 26.4. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of two hundred six hundred fifty thousand dollars (\$200,000) (\$650,000) for the 1995-96 1996-97 fiscal year shall be allocated to the North Carolina Healthy Start Foundation to support the programs and activities of the Governor's Commission on Reduction of Infant Mortality, Foundation. Funds allocated pursuant to this section shall be expended first to support statewide planning, promotion, and coordination for the First Step Campaign. Funds remaining after allocation for First Step shall be used to support other programs and activities, activities aimed at reducing infant mortality. The Healthy Start Foundation shall report on all of its programs to the Joint Legislative Commission on Governmental Operations on or before March 1, 1996-1997. The report shall include information on the Foundation's activities and accomplishments during the past fiscal year, a list of the groups, organizations, communities, and other recipients of assistance from the Foundation in the last 12 months, itemized expenditures during the past fiscal year with sources of funding, planned activities, and accomplishments for at least the next 12 months, and itemized anticipated expenditures with sources of funding for the next 12 months."

Requested by: Representatives Mitchell, Weatherly, Culpepper, Senators Martin of Pitt, Jordan, Kerr

BEAVER DAMAGE CONTROL FUNDS

Sec. 27.15. (a) Subsection (b) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, and Section 26.6 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(b) The Beaver Damage Control Advisory Board shall develop a pilot program to control beaver damage on private and public lands. Anson, Bladen, Brunswick, Carteret, Chatham, Chowan, Craven, Columbus,

Cumberland, Duplin, Edgecombe, Franklin, Granville, Greene, Halifax, Harnett, Hertford, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Nash, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Scotland, Vance, Warren, Washington, Wayne, and Wilson Counties shall participate in the pilot program. The Beaver Damage Control Advisory Board shall act in an advisory capacity to the Wildlife Resources Commission in the implementation of the program. In developing the program, the Board shall:

- (1) Orient the program primarily toward public health and safety and toward landowner assistance, providing some relief to landowners through beaver control and management rather than eradication;
- (2) Develop a priority system for responding to complaints about beaver damage;
- (3) Develop a system for documenting all activities associated with beaver damage control, so as to facilitate evaluation of the program;
- (4) Provide educational activities as a part of the program, such as printed materials, on-site instructions, and local workshops;
- (5) Provide for the hiring of personnel necessary to implement beaver damage control activities, administer the pilot program, and set salaries of personnel;
- (6) Evaluate the costs and benefits of the program that might be applicable elsewhere in North Carolina.

No later than ~~September 30, 1994~~ and again upon the conclusion of the ~~pilot program on June 30, 1996,~~ January 15, 1997, the Board shall issue a report to the Wildlife Resources Commission on the program to date, including recommendations on the feasibility of continuing the program in participating counties and the desirability of expanding the program into other counties. The Wildlife Resources Commission shall prepare a plan to implement a statewide program to control beaver damage on private and public lands. No later than ~~January 1, 1995,~~ March 15, 1997, the Wildlife Resources Commission shall present its plan in a report to the House Appropriations Subcommittee on Natural and Economic ~~Resources and Resources,~~ the Senate Appropriations Committee on Natural and Economic ~~Resources, Resources, and the Fiscal Research Division.~~"

(b) Subsection (c) of Section 69 of Chapter 1044 of the 1991 Session Laws reads as rewritten:

"(c) The Wildlife Resources Commission shall implement the pilot program, and may enter a cooperative agreement with the Animal Damage Control Division of the Animal and Plant Health Inspection Service, United States Department of Agriculture, to accomplish the pilot program."

(c) Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, and Section 26.6 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire June 30, ~~1996,~~ 1997."

(d) Subsection (d) of Section 26.6 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"(d) Of the funds appropriated from the General Fund to the Wildlife Resources Commission for the 1995-96 fiscal year, year and the 1996-97 fiscal year, there is allocated the sum of three hundred seventy-two thousand six hundred ninety dollars (\$372,690) for the 1995-96 fiscal year and the sum of four hundred fifty thousand dollars (\$450,000) for the 1996-97 fiscal year to provide the State share necessary to continue the beaver damage control pilot program established by Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws and Section 27.3 of the 1993 Session Laws, in Anson, Bladen, Brunswick, Carteret, Chatham, Chowan, Craven, Columbus, Cumberland, Duplin, Edgecombe, Franklin, Granville, Greene, Halifax, Harnett, Hertford, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Nash, Onslow, Pamlico, Pender, Pitt, Robeson, Sampson, Scotland, Vance, Warren, Washington, Wayne, and Wilson Counties, provided the sum of twenty-five thousand dollars (\$25,000) in federal funds is available in each fiscal year to provide the federal share. These funds shall be matched by four thousand dollars (\$4,000) of local funds in each fiscal year from each of the 27 participating counties. Counties participating in this program shall make a commitment of their local matching funds to the Wildlife Resources Commission no later than September 30 of that fiscal year."

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
1995-96 BEAVER DAMAGE CONTROL FUNDS REVERT

Sec. 27.16. (a) The sum of one hundred fifty thousand dollars (\$150,000) that was appropriated to the Wildlife Resources Commission for the 1995-96 fiscal year to provide the State share for beaver damage control pursuant to Section 27.3 of Chapter 769 of the 1993 Session Laws and that was designated as recurring funds shall revert to the General Fund on June 30, 1996.

(b) This section is effective June 30, 1996.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

PILOT PRIVATIZATION PROJECT FOR CONSTRUCTION OF FORESTRY BUILDINGS

Sec. 27.18. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars (\$150,000) for the 1996-97 fiscal year shall be placed in a reserve within the Department, and the Department shall, as part of a pilot project, enter into a contract with a county to construct a forestry headquarters building in that county. The contract shall provide: that the county may contract with a private for-profit or nonprofit firm for the construction of a building at least 2,300 square feet in size to consist of, at a minimum, a storage unit and an office area and to include a surfaced driveway and parking area and utility services; that the county shall submit the design plans and specifications to the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources for review and approval; that the State shall not lease any State-owned land to the county for the building prior to the Department of

Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources approving the design plans and specifications; that the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources shall inspect and review the project during construction and at the completion of construction to ensure that the building is suitable for its intended use and to determine whether the building is suitable for acquisition by the State; that the Department shall not reimburse the county from the reserve until the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources determine that the building is suitable for acquisition by the State; that the State shall lease to the county any land the State owns that is needed for siting the building and its appurtenances, and, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration such property, the building, and its appurtenances; and that, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration any land the county owns that is needed for siting the building and its appurtenances, the building, and its appurtenances. It is the intent of the General Assembly that the General Assembly shall not appropriate additional funds for this pilot project and that the county in which the forestry headquarters building is to be located shall be responsible for all costs in excess of one hundred fifty thousand dollars (\$150,000), including those costs related to the county purchasing any new land necessary for siting the building and its appurtenances and those costs related to constructing and equipping this building and its appurtenances. No later than December 15, 1996, and again no later than April 15, 1997, the Department shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the progress of this pilot project and shall include in both reports the Department's findings and recommendations on the desirability and feasibility of expanding this project to the construction of forestry buildings in other counties.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt
FOREST RESOURCES NURSERY PROGRAM FUNDS

Sec. 27.18. The Division of Forest Resources, Department of Environment, Health, and Natural Resources, may retain and use any funds derived from the taking of nursery acreage at Claridge State Forest Nursery near Goldsboro in Wayne County due to the construction of the Highway 70 Bypass. These funds shall remain in a nonreverting fund in the Department to be used to cover the cost associated with relocating nursery fields and seed orchards.

Requested by: Representatives Mitchell, Weatherly, Reynolds, Allred, Sexton, Baker, Senators Martin of Pitt, Jordan, Kerr

MULTI-COUNTY WATER CONSERVATION AND INFRASTRUCTURE DISTRICT

Sec. 24.22. (a) G.S. 158-15.1 reads as rewritten:

"§ 158-15.1. *Multi-County Water Conservation and Infrastructure District.*

(a) There is established the Multi-County Water Conservation and Infrastructure District, which is a public authority for the purpose of the Local Government Budget and Fiscal Control Act.

(b) The member counties of the Multi-County Water Conservation and Infrastructure District are Bertie, Caswell, Forsyth, Granville, Guilford, Halifax, Martin, Northampton, Person, Rockingham, Stokes, Surry, Vance Vance, and Warren, and Washington.

(c) The governing body of the Multi-County Water Conservation and Infrastructure District is the Multi-County Water ~~Commission, which has eight members.~~ Commission. One member of this Commission shall be appointed for a three-year term by the board of commissioners of each member ~~county for a three-year term.~~ county.

(d) All monies received by the State of North Carolina for sale of water under the Roanoke River Basin Compact, if enacted, shall be paid to the Multi-County Water Conservation and Infrastructure District.

(e) The District may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any political subdivision of this State or any other state, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this subsection together with the identity of the donor or grantor, shall be detailed in the annual audit of the District.

(f) At times specified by the Multi-County Water Commission, net revenues after operating expenses of the District shall be paid only to the member counties Bertie, Granville, Halifax, Martin, Northampton, Person, Vance, and Warren Counties according to the following formula: (i) one-half pro-rata based on population of each member county; and (ii) one-half pro-rata based on land area of each county. The remaining member counties shall receive none of the net revenues received pursuant to subsection (d) of this section.

(g) Member counties may use funds received under this section for public purposes relating to infrastructure development, economic development, and water conservation.

(h) The Commission may adopt such rules as may be needful for operation of its affairs, and shall employ and terminate personnel as if it were a county."

(b) Notwithstanding G.S. 158-15.1 as amended by subsection (a) of this section, of the funds appropriated to the Department of Environment, Health, and Natural Resources in Section 26.12 of Chapter 507 of the 1995 Session Laws for the 1996-97 fiscal year for the member counties of the Multi-County Water Conservation and Infrastructure District, the sum of five hundred thousand dollars (\$500,000) shall be allocated among Bertie, Granville, Halifax, Martin, Northampton, Person, Vance, and Warren Counties based on the following formula: (i) one-half pro-rata based on population of each member county; and (ii) one-half pro-rata based on land area of each county.

(c) Notwithstanding G.S. 158-15.1 as amended by subsection (a) of this section, of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources for the 1996-97 fiscal year for the member counties of the Multi-County Water Conservation and Infrastructure District, the sum of one million dollars (\$1,000,000) shall be allocated among Caswell, Forsyth, Guilford, Rockingham, Stokes, Surry, and Washington Counties based on the percentage of each member county's land area within that part of the Roanoke River Basin that is located in North Carolina.

Requested by: Senators Perdue, Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

MARINE FISHERIES DOCK MAY BE USED BY OTHER AGENCIES

Sec. 27.21. The Division of Marine Fisheries' Morehead City Dock Facility shall be available for use by the University of North Carolina Institute of Marine Sciences, the North Carolina Sea Grant College Program, and Carteret Community College for their programs and activities.

Requested by: Representatives Mitchell, Weatherly, Senator Martin of Pitt, Jordan, Kerr

ACCOUNTABILITY FOR CERTAIN STATE AGRICULTURE COST SHARE FUNDING

Sec. 27.22. (a) G.S. 143-215.74(b) reads as rewritten:

"(b) The program shall be subject to the following requirements and limitations:

- (1) The purpose of the program shall be to reduce the input of agricultural nonpoint source pollution into the water courses of the State.
- (2) The program shall initially include the present 16 nutrient sensitive watershed counties and 17 additional counties.
- (3) Priority Subject to subdivision (7) of this subsection, priority designations for inclusions in the program shall be under the authority of the Soil and Water Conservation Commission and the Commission. The Soil and Water Conservation Commission shall retain the authority to allocate the cost share funds.
- (4) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local Soil and Water Conservation District.
- (5) Funding may be provided to assist practices including conservation tillage, diversions, filter strips, field borders, critical area plantings, sediment control structures, sod-based rotations, grassed waterways, strip-cropping, terraces, cropland conversion to permanent vegetation, grade control structures, water control structures, closure of lagoons, emergency spillways, riparian buffers or equivalent controls, odor control best management practices, insect control best management practices, and animal waste management systems and application. Funding for animal waste management shall be allocated for practices in river basins

such that the funds will have the greatest impact in improving water quality.

- (6) State funding shall be limited to seventy-five percent (75%) of the average cost for each practice with the assisted farmer providing twenty-five percent (25%) of the cost (which may include in-kind support) with a maximum of seventy-five thousand dollars (\$75,000) per year to each applicant.
- (7) Priority designation for inclusion in the program for State funding shall be given to projects that improve water quality. To be eligible for cost share funds under this subdivision, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality."

(b) G.S. 143-215.74 is amended by adding a new subsection to read:

"(e) The Soil and Water Conservation Commission shall report no later than January 31, 1997, and annually thereafter to the Environmental Review Commission and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

(c) The Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources, shall report to the Environmental Review Commission no later than January 1, 1997, regarding the desirability of requiring each applicant for State funding under the Agriculture Cost Share Program for Nonpoint Source Pollution Control under Part 9 of Article 21 of Chapter 143 of the General Statutes to submit a nutrient management plan.

(d) This section applies to contracts entered into on or after ratification of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senator Martin of Pitt

PROHIBIT TRANSFER OF POSITIONS FROM SOIL AND WATER CONSERVATION TO WATER QUALITY

Sec. 27.23. The Department of Environment, Health, and Natural Resources shall not transfer any positions established in this act for the Division of Soil and Water Conservation to the Division of Water Quality.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

ADOPT-A-BEACH

Sec. 27.24. (a) Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Adopt-A-Beach Program.

"§ 143-660. Definitions.

The following definitions apply in this Article:

- (1) Department. -- The Department of Environment, Health, and Natural Resources.
- (2) Program. -- Adopt-A-Beach Program established by this Article.
- (3) Trash. -- Debris not natural to the coastal environment such as plastic bags, aluminum, glass, and paper products. The term does not include indigenous materials such as driftwood and seaweed.

"§ 143-661. Adopt-A-Beach Program; established; purposes.

The Adopt-A-Beach Program is established within the Department of Environment, Health, and Natural Resources. The purpose of the Program is twofold: (i) to educate citizens and make them more aware of the need to keep the State's coastline clean and free of trash, and (ii) to generate data on the volume and contents of beach pollution.

"§ 143-662. Adopt-A-Beach Program; pilot program; expansion of program reporting requirement.

(a) Initially, the Department shall select five improved ocean accesses and two sound-side accesses to be cleaned up and maintained on a monthly basis. Each access shall be assigned by the Department to an organization or business applying to the Department to participate in the Program. Participants in the Program shall be recognized at their selected access by the placement of an 8"x10" sign bearing the Adopt-A-Beach Program name, sponsor, and participant. The Program shall be expanded to accommodate increased participation as appropriate.

(b) The Department shall report to the Environmental Review Commission by March 15, 1997, and annually thereafter regarding its progress in implementing the Program.

"§ 143-663. Rule-making authority.

The Department may adopt rules to implement this Article."

(b) Of the funds appropriated by this act for the 1996-97 fiscal year to the Department of Environment, Health, and Natural Resources, the sum of thirty thousand dollars (\$30,000) shall be allocated to implement this section.

Requested by: Representatives Holmes, Creech, Esposito, Senators Martin of Pitt, Jordan, Kerr

WATER RESOURCES DEVELOPMENT PROJECTS FUNDS

Sec. 27.26. (a) Of the funds designated in Section 7.11 of this act to the Department of Environment, Health, and Natural Resources for the 1996-97 fiscal year for capital projects, the sum of eight million seven hundred five thousand dollars (\$8,705,000) shall be used for water resources development projects. The Department shall allocate funds for the following projects whose estimated costs are as indicated:

(1)	Jordan Lake Water Supply Repayment	\$130,000
(2)	Wilmington Harbor Maintenance Dredging	575,000
(3)	Morehead City Harbor Maintenance Dredging	50,000
(4)	Wanchese Channel Maintenance Dredging	100,000
(5)	Aquatic Plant Control (statewide, including Lake Gaston)	200,000
(6)	Wilmington Harbor Anchorage Basin Widener	400,000

(7)	Cape Fear - Northeast Cape Fear Deepening	530,000
(8)	North & Manteo Channel Maintenance Dredging	400,000
(9)	State - Local Projects	380,000
(10)	New Hanover County Spoil Disposal	125,000
(11)	Beaufort Harbor	80,000
(12)	Rollinson Channel Maintenance, Dare County	400,000
(13)	Far Creek Channel Maintenance, Hyde County	280,000
(14)	Currituck Sound Flow Study	100,000
(15)	Emergency Flood Control Projects (Section 14)	75,000
(16)	Corps of Engineers Feasibility Studies	100,000
(17)	Planning Assistance to Communities	75,000
(18)	Walter Slough Dredging	500,000
(19)	Whittaker Creek Canal Dredging	425,000
(20)	Carolina Beach South (Kure Beach) Beach Protection	3,580,000
(21)	Dare County Beaches Feasibility Study	200,000
	TOTAL	\$8,705,000

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1996-97 fiscal year, or if the projects listed in subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) Corps of Engineers project feasibility studies.
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1996-97.
- (3) State-local Water Resources Development Projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1997-98 fiscal year.

(c) The Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.
- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

STRAIGHT PIPE ELIMINATION AMNESTY PROGRAM

Sec. 27.26. (a) The Department of Environment, Health, and Natural Resources shall establish a program for the elimination of domestic sewage or wastewater discharges, both direct (straight pipes) and from overland flow of failing septic systems. The initial focus of the program shall include three components: (i) the identification and elimination of domestic sewage discharges into streams proposed to be used or currently used for public water supplies, (ii) an amnesty period to end December 31, 1997, during which violations of State rules and laws regarding domestic sewage and wastewater discharges identified as a result of this program may be reported and addressed without incurring legal consequences, and (iii) a public education effort regarding the program and the amnesty period.

(b) Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred seventeen thousand five hundred dollars (\$117,500) in recurring funds and the sum of twelve thousand five hundred dollars (\$12,500) in nonrecurring funds shall be allocated for two staff positions with the responsibility for carrying out the program developed by the Department of Environment, Health, and Natural Resources pursuant to this section and for other operating costs of implementing this section.

(c) The Department of Environment, Health, and Natural Resources shall report to the Environmental Review Commission and the Fiscal Research Division beginning October 15, 1996, and quarterly thereafter, regarding the implementation of this program.

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

ABOVEGROUND STORAGE TANKS INSPECTION AND MONITORING

Sec. 27.30. (a) Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act for the 1996-97 fiscal year, the sum of two hundred thousand dollars (\$200,000) shall be used to continue to conduct periodic inspections at major oil terminal facilities, as defined in G.S. 143-215.77, in Mecklenburg County and the equipment at these facilities to determine whether oil or any other hazardous substance is being discharged into the environment and, at the facility and in the area surrounding the facility, to monitor the quality of the air, water, and soil and analyze air, water, and soil samples to determine the presence of toxic emissions, water quality degradation, or soil contamination.

(b) Beginning October 1, 1996, and quarterly thereafter, the Department of Environment, Health, and Natural Resources shall submit a report of its inspection and monitoring activities pursuant to subsection (a) of this section to the Environmental Review Commission.

Requested by: Senators Martin of Pitt, Jordan, Kerr; Representatives Mitchell, Weatherly, Redwine

WASTEWATER SYSTEM IMPROVEMENT PERMITS

Sec. 27.31. (a) G.S. 130A-334(7b) reads as rewritten:

"(7b) 'Plat' means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the

site for the proposed wastewater system, and the location of water supplies and surface waters. 'Plat' also means, for subdivision lots approved by the local planning authority and recorded with the county register of deeds, a copy of the recorded subdivision plat that is accompanied by a site plan that is drawn to scale."

(b) G.S. 130A-334(13a) reads as rewritten:

"(13a) 'Site plan' means a drawing not necessarily drawn to scale that shows the existing and proposed property lines with dimensions, the location of the facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters."

(c) G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the rules or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. A statement The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit that states that the permit is subject to revocation if site plans or the intended use change. permit."

(d) G.S. 130A-336(a) reads as rewritten:

"(a) Any proposed site for a residence, place of business, or place of public assembly in an area not served by an approved wastewater system shall be evaluated by the local health department in accordance with rules adopted pursuant to this Article. An improvement permit shall be issued in compliance with the rules adopted pursuant to this Article. An improvement permit shall include:

- (1) For permits that are valid without expiration, a plat or, for permits that are valid for five years, a site plan.
- (2) A description of the facility the proposed site is to serve.
- (3) The proposed wastewater system, system and its location.
- (4) The conditions for any site modifications.

(5) Any other information required by the rules of the Commission. The improvement permit shall not be affected by change in ownership of the site for the wastewater system provided both the site for the wastewater system and the facility the system serves are unchanged and remain under the ownership or control of the person owning the facility. No person shall commence or assist in the construction, location, or relocation of a residence, place of business, or place of public assembly in an area not served by an approved wastewater system unless an improvement permit and an authorization for wastewater system construction are obtained from the local health department. This requirement shall not apply to a manufactured residence exhibited for sale or stored for later sale and intended to be located at another site after sale."

(e) G.S. 130A-336(b) reads as rewritten:

"(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period of five years equal to the period of validity of the improvement permit, not to exceed five years, and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction."

(f) G.S. 130A-336 is amended by adding a new subsection to read:

"(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department of Environment, Health, and Natural Resources may withhold public health funding from that local health department."

(g) This section becomes effective upon the ratification date of this act and applies to all applications for permits filed on or after that date.

Requested by: Senators Martin of Pitt, Jordan, Kerr; Representatives Mitchell, Weatherly

ENVIRONMENTAL REPORTS

Sec. 27.32. (a) The Department of Environment, Health, and Natural Resources shall report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997, and July 1, 1997, on:

- (1) Actions taken to reorganize the Department to make the Department operate more efficiently and effectively.

- (2) Actions taken by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission to enhance communication, and to develop a strategic plan to coordinate and consolidate activities.
- (3) Progress made to implement initiatives to protect and restore impaired water quality in the Neuse River Basin and in nutrient sensitive waters including a report on implementation of the animal waste management system permits.

(b) The Primary Investigator or Researcher receiving funding from the State shall report to the Environmental Review Commission, the Joint Legislative Commission on Governmental Operations, the Scientific Advisory Council on Water Resources and Coastal Fisheries Management, and the Fiscal Research Division on January 1, 1997, and July 1, 1997, on preliminary and final results of research projects and studies on:

- (1) Odor control technology;
- (2) Sources of nitrogen through isotope markers;
- (3) Groundwater impacts of lagoons;
- (4) Atmospheric deposition of nitrogen in the Neuse Estuary; and
- (5) Alternative animal waste technologies.

Requested by: Senators Perdue, Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

CORE SOUND/DESCRIPTION OF AREA A FOR SHELLFISH LEASE MORATORIUM.

Sec. 27.33. Section 3 of Chapter 547 of the 1995 Session Laws (1996 Regular Session) as amended by Section 1 of Chapter 633 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire July 1, 1997."

Requested by: Senators Martin of Pitt, Jordan, Kerr, Representatives Mitchell, Weatherly

ENVIRONMENTAL TECHNICAL CORRECTIONS

Sec. 27.34. (a) G.S. 143-215.10A, as enacted by Chapter 626 of the 1995 Session Laws (1996 Reg. Sess.), reads as rewritten:

"§ 143-215.10A. *Legislative findings and intent.*

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water Conservation. Permitting, inspection, and enforcement will be vested in the Division of Environmental Management, Water Quality."

(b) G.S. 143-215.10B(4), as enacted by Chapter 626 of the 1995 Session Laws (1996 Reg. Sess.), reads as rewritten:

"(4) 'Division' means the Division of ~~Environmental Management~~ Water Quality of the Department."

(c) G.S. 90A-47.3(b), as enacted by Chapter 626 of the 1995 Session Laws (1996 Reg. Sess.), reads as rewritten:

"(b) The Commission, in cooperation with the Division of ~~Environmental Management~~ Water Quality of the Department of Environment, Health, and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate."

(d) G.S. 106-805(5), as enacted by Chapter 626 of the 1995 Session Laws (1996 Reg. Sess.), reads as rewritten:

"(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of ~~Environmental Management,~~ Water Quality, Department of Environment, Health, and Natural Resources."

(e) Subsection (b) of Section 17 of Chapter 626 of the 1995 Session Laws (1996 Reg. Sess.) reads as rewritten:

"(b) The interagency group shall consist of two representatives from each of the following State agencies: the Division of Soil and Water Conservation, Department of Environment, Health, and Natural Resources; the Division of ~~Environmental Management,~~ Water Quality, Department of Environment, Health, and Natural Resources; the Department of Agriculture; and the Cooperative Extension Service. The General Assembly

encourages the Natural Resources Conservation Service, United States Department of Agriculture, to provide two representatives from its agency to participate fully as members of the interagency group. The interagency group shall remain in existence until such time after December 31, 1997, that the Secretary of Environment, Health, and Natural Resources determines the interagency group is no longer needed to resolve issues related to certifying animal waste management plans."

(f) Section 18 of Chapter 743 of the 1995 Session Laws (1996 Reg. Sess.) reads as rewritten:

"Sec. 18. ~~G.S. 143-215.114(g)~~ 143-215.114A(g) is repealed."

(g) This section becomes effective 1 July 1996.

Requested by: Representatives Mitchell, Weatherly, Nichols, Senators Martin of Pitt, Jordan, Kerr

STUDY ALTERNATIVE ANIMAL WASTE TECHNOLOGIES

Sec. 27.35. Of the funds appropriated to the Department of Environment, Health, and Natural Resources in this act, the sum of five hundred thousand dollars (\$500,000) for the 1996-97 fiscal year shall be transferred to the Board of Governors of The University of North Carolina for the North Carolina Agricultural Research Service at North Carolina State University to serve as focal points for experimentation with and testing of alternative animal waste disposal technologies for use in agriculture. No later than January 1, 1997, the Board of Governors shall report to the Environmental Review Commission and the Fiscal Research Division on progress under the research, including any findings and recommendations at that time.

Requested by: Senators Plyler, Perdue, Odom, Representatives Holmes, Creech, Esposito

ENSURE LEGISLATIVE REVIEW OF CERTAIN RULES

Sec. 27.36. G.S. 150B-21.3(c) does not apply to a rule that extends the date set in 15A NCAC 13B .1627(c)(10)(A) for closure of a municipal solid waste landfill facility beyond January 1, 2000.

Requested by: Senators Martin of Pitt, Odom, Jordan, Kerr, Representatives Mitchell, Weatherly

OPERATION OF PERMIT INFORMATION CENTER

Sec. 27.37. The Department of Environment, Health, and Natural Resources may operate the Permit Information Center in order to improve permit applications, guidance materials, applicant and citizen training, and other purposes.

PART 28. SALARIES AND BENEFITS

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

GOVERNOR AND COUNCIL OF STATE

Sec. 28. (a) Effective September 1, 1996, G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~ninety-eight thousand five hundred seventy-six dollars (\$98,576)~~ one hundred three thousand twelve dollars (\$103,012) annually, payable monthly."

(b) Effective September 1, 1996, Section 7.1(b) of Chapter 507 of the 1995 Session Laws reads as rewritten:

"(b) The annual salaries for the members of the Council of State, payable monthly, for the ~~1995-96 and 1996-97 fiscal years~~ year, beginning September 1, 1996, are:

<u>Council of State</u>	<u>Annual Salary</u>	
Lieutenant Governor	\$87,000	<u>\$90,915</u>
Attorney General	87,000	<u>90,915</u>
Secretary of State	87,000	<u>90,915</u>
State Treasurer	87,000	<u>90,915</u>
State Auditor	87,000	<u>90,915</u>
Superintendent of Public Instruction	87,000	<u>90,915</u>
Agriculture Commissioner	87,000	<u>90,915</u>
Insurance Commissioner	87,000	<u>90,915</u>
Labor Commissioner	87,000	<u>90,915"</u>

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

NONELECTED DEPARTMENT HEADS

Sec. 28.1. Effective September 1, 1996, Section 7.2 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.2. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the ~~1995-96 and 1996-97 fiscal years~~ year, beginning September 1, 1996, are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>	
Secretary of Administration	\$85,000	<u>\$88,825</u>
Secretary of Correction	85,000	<u>88,825</u>
Secretary of Cultural Resources	85,000	<u>88,825</u>
Secretary of Commerce	85,000	<u>88,825</u>
Secretary of Environment, Health, and Natural Resources	85,000	<u>88,825</u>
Secretary of Human Resources	85,000	<u>88,825</u>
Secretary of Revenue	85,000	<u>88,825</u>
Secretary of Transportation	85,000	<u>88,825</u>
Secretary of Crime Control and Public Safety	85,000	<u>88,825"</u>

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

CERTAIN EXECUTIVE BRANCH OFFICIALS

Sec. 28.2. (a) Effective September 1, 1996, Section 7.3 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.3. The annual salaries, payable monthly, for the ~~1995-96 and 1996-97 fiscal years~~ year, beginning September 1, 1996, for the following executive branch officials are:

<u>Executive Branch Officials</u>	<u>Annual Salary</u>
Chairman, Alcoholic Beverage Control Commission	\$ 77,365 <u>\$80,846</u>
State Controller	108,271 <u>113,143</u>
Commissioner of Motor Vehicles	77,365 <u>80,846</u>
Commissioner of Banks	77,365 <u>80,846</u>
Chairman, Employment Security Commission	77,365
State Personnel Director	85,000 <u>88,825</u>
Chairman, Parole Commission	70,643 <u>73,822</u>
Members of the Parole Commission	65,220 <u>68,155</u>
Chairman, Industrial Commission	69,510 <u>72,638</u>
Members of the Industrial Commission	67,817 <u>70,869</u>
Chairman of the Utilities Commission	81,381
Commissioner of the Utilities Commission	80,381
Executive Director, Agency for Public Telecommunications	65,220 <u>68,155</u>
General Manager, Ports Railway Commission	58,893 <u>61,543</u>
Director, Museum of Art	79,274 <u>82,841</u>
Executive Director, Wildlife Resources Commission	66,773 <u>69,778</u>
Executive Director, North Carolina Housing Finance Agency	95,746 <u>100,055</u>
Executive Director, North Carolina Agricultural Finance Authority	75,302
78,691	
Director, Office of Administrative Hearings	76,500 <u>79,943"</u>

(b) Effective September 1, 1996, G.S. 62-10(h) reads as rewritten:

"(h) The salary of each commissioner ~~and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act.~~ shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars (\$1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. 'Service' means service as a member of the Utilities Commission."

(c) Effective September 1, 1996, G.S. 96-3(c) reads as rewritten:

"(c) Salaries. -- The chairman of the Employment Security Commission of North Carolina, appointed by the Governor, shall be paid from the Employment Security Administration Fund a salary payable on a monthly basis, which salary shall be fixed by the ~~General Assembly in the Current Operations Appropriations Act;~~ appointing officer in an amount no higher than the highest salary set by the General Assembly for an executive branch

official; and the members of the Commission, other than the chairman, shall each receive the same amount per diem for their services as is provided for the members of other State boards, commissions, and committees who receive compensation for their services as such, including necessary time spent in traveling to and from his place of residence within the State to the place of meeting while engaged in the discharge of the duties of his office and his actual traveling expenses, the same to be paid from the aforesaid fund."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

JUDICIAL BRANCH OFFICIALS

Sec. 28.3. Effective September 1, 1996, Section 7.4 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.4. (a) The annual salaries, payable monthly, for specified judicial branch officials for the ~~1995-96 and 1996-97 fiscal years~~ year, beginning September 1, 1996, are:

<u>Judicial Branch Officials</u>	<u>Annual Salary</u>
Chief Justice, Supreme Court	\$98,576 \$103,012
Associate Justice, Supreme Court	96,000 100,320
Chief Judge, Court of Appeals	93,600 97,812
Judge, Court of Appeals	92,000 96,140
Judge, Senior Regular Resident Superior Court	89,500 93,528
Judge, Superior Court	87,000 90,915
Chief Judge, District Court	79,000 82,555
Judge, District Court	76,500 79,943
District Attorney	80,600 84,227
Administrative Officer of the Courts	89,500 93,528
Assistant Administrative Officer of the Courts	75,160 78,542
Public Defender	80,600 84,227

(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed ~~forty-nine thousand five hundred eighty dollars (\$49,580),~~ fifty-one thousand eight hundred eleven dollars (\$51,811) and the minimum salary of any assistant district attorney or assistant public defender is at least ~~twenty-five thousand three hundred twelve dollars (\$25,312) effective July 1, 1995,~~ twenty-six thousand four hundred fifty-one dollars (\$26,451) effective September 1, 1996.

(c) The salaries in effect ~~for the 1994-95 fiscal year~~ on August 31, 1996, for permanent, full-time employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by ~~two percent (2%), commencing July 1, 1995,~~ four and five-tenths percent (4.5%), commencing September 1, 1996.

(d) The salaries in effect ~~for the 1994-95 fiscal year~~ on August 31, 1996, for all permanent, part-time employees of the Judicial Department shall be increased on and after ~~July 1, 1995~~, September 1, 1996, by pro rata amounts of the ~~two percent (2%)~~, four and five-tenths percent (4.5%)."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

CLERKS OF SUPERIOR COURT

Sec. 28.4. Effective September 1, 1996, G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary
Less than 100,000	\$57,670 <u>\$60,265</u>
100,000 to 149,999	64,780 <u>67,695</u>
150,000 to 249,999	71,890 <u>75,125</u>
250,000 and above	79,000 <u>82,555</u>

The salary schedule in this subsection is intended to represent the following percentage of the salary of a chief district court judge:

Less than 100,000	73%
100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

ASSISTANT AND DEPUTY CLERKS OF SUPERIOR COURT

Sec. 28.5. Effective September 1, 1996, G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper	Annual Salary
Minimum	\$21,549 <u>\$22,519</u>
Maximum	38,154 <u>39,871</u>

Deputy Clerks	Annual Salary
Minimum	\$17,229 <u>\$18,004</u>
Maximum	29,389 <u>30,712</u> ."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

MAGISTRATES' PAY PLAN

Sec. 28.6. (a) Effective September 1, 1996, G.S. 7A-171.1(a)(1) reads as rewritten:

- "(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary	
Entry Rate	\$23,417	\$24,471
Step 1	25,767	26,927
Step 2	28,325	29,600
Step 3	31,116	32,516
Step 4	34,173	35,711
Step 5	37,533	39,222
Step 6	41,228	43,083."

(b) Effective September 1, 1996, G.S. 7A-171.1(a)(1) reads as rewritten:

- "(1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:

Less than 1 year of service	\$18,457
1 or more but less than 3 years of service	19,406 20,279
3 or more but less than 5 years of service	21,314 22,273.

Upon completion of five years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a)."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

GENERAL ASSEMBLY PRINCIPAL CLERKS

Sec. 28.7. Effective September 1, 1996, G.S. 120-37(c) reads as rewritten:

- "(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~fifty-five thousand eighty dollars (\$55,080)~~ fifty-seven thousand five hundred fifty-nine dollars (\$57,559) payable monthly. The Legislative Services Commission shall

review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SERGEANT-AT-ARMS AND READING CLERKS

Sec. 28.8. Effective September 1, 1996, G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~two hundred thirty-seven dollars (\$237.00) per week~~, two hundred forty-eight dollars (\$248.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

LEGISLATIVE EMPLOYEES

Sec. 28.9. Effective September 1, 1996, Section 7.11 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.11. The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year ~~1994-95 by two percent (2%)~~, 1995-96 by four and five-tenths percent (4.5%). Nothing in this act limits any of the provisions of G.S. 120-32."

Requested by: Representatives Holmes, Creech, Esposito, Grady, Preston, Senators Plyler, Perdue, Odom, Winner, Plexico

COMMUNITY COLLEGES PERSONNEL

Sec. 28.10. Effective September 1, 1996, Section 7.12 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.12. The Director of the Budget shall transfer from the Reserve for Salary Increases created in this act for fiscal year ~~1995-96~~ 1996-97 funds to the Department of Community Colleges necessary to provide an average annual salary increase of ~~two percent (2%)~~, four and five-tenths percent (4.5%), including funds for the employer's retirement and social security contributions, commencing ~~July 1, 1995~~, September 1, 1996, for all permanent full-time community college institutional personnel supported by State funds. The State Board of Community Colleges shall establish guidelines for providing their salary increases to community college institutional ~~personnel~~, personnel to include consideration of increases based on performance. Salary funds shall be used to provide an average annual

salary increase of ~~two percent (2%)~~ four and five-tenths percent (4.5%) to all full-time employees and part-time employees on a pro rata basis."

Requested by: Representatives Holmes, Creech, Esposito, Grady, Preston, Senators Plyler, Perdue, Odom, Winner, Plexico

UNIVERSITY OF NORTH CAROLINA SYSTEM - EPA SALARY INCREASES

Sec. 28.11. (a) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Salary Increases created in this act for fiscal year 1996-97 to provide an annual average salary increase of four and five-tenths percent (4.5%), including funds for the employer's retirement and social security contributions, commencing September 1, 1996, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section. The Board of Governors shall include consideration of increases based on performance in its adoption of rules for the allocation of funds for salary increases.

(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Salary Increases created in this act for fiscal year 1996-97 to provide an annual average salary increase of five and five-tenths percent (5.5%), including funds for the employer's retirement and social security contributions, commencing September 1, 1996, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics, and may not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

MOST STATE EMPLOYEES

Sec. 28.12. Section 7.14 of Chapter 507 of the 1995 Session Laws reads as rewritten:

"Sec. 7.14. (a) The salaries in effect ~~June 30, 1995, August 31, 1996,~~ of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or the Highway Fund shall be increased, on or after ~~July 1, 1995,~~ September 1, 1996, unless otherwise provided by this act, ~~by two percent (2%),~~ pursuant to the Comprehensive Compensation System set forth in G.S. 126-7 and rules adopted by the State Personnel Commission, as follows:

- (1) Career growth recognition awards in the amount of two percent (2%); and
- (2) A cost-of-living adjustment in the amount of two and five-tenths percent (2.5%).

Notwithstanding G.S. 126-7(4a), any permanent full-time State employee whose salary is set in accordance with the State Personnel Act and whose salary is at the top of the salary range or within two percent (2%) of the top of the salary range shall receive a one-time bonus of two percent (2%) less the career growth recognition award the employee receives. The employee shall receive the career growth bonus at the time the employee is eligible for the career growth recognition award, but not earlier than September 1, 1996.

(b) Except as otherwise provided in this act, salaries in effect ~~June 30, 1995,~~ August 31, 1996, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by ~~two percent (2%), commencing July 1, 1995,~~ four and five-tenths percent (4.5%), commencing September 1, 1996.

(c) The salaries in effect ~~June 30, 1995,~~ August 31, 1996, for all permanent part-time State employees shall be increased on and after ~~July 1, 1995,~~ September 1, 1996, by pro rata amounts of the salary increases provided for permanent full-time employees covered under subsection (a) of this section.

(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase on and after ~~July 1, 1995,~~ September 1, 1996, in accordance with subsections (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, of the permanent full-time and part-time employees of the agency.

(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts of the four and five-tenths percent (4.5%) salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing ~~July 1, 1995,~~ September 1, 1996.

(f) ~~No~~ Except as provided by subsection (a) of this section, no person may receive a salary increase under G.S. 126-7 during the ~~1995-96~~ 1996-97 fiscal year, and no State employee or officer shall receive a merit increment during the ~~1995-96 and~~ 1996-97 fiscal ~~years~~ year except as otherwise provided by this act."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

ALL STATE-SUPPORTED PERSONNEL

Sec. 28.13. (a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased

from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

(c) The salary increases provided in this Part are to be effective September 1, 1996, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to September 1, 1996, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.

Payroll checks issued to employees after September 1, 1996, which represent payment of services provided prior to September 1, 1996, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d) The Director of the Budget shall transfer from the Reserve for Salary Increases in this act for fiscal year 1996-97 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

(e) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

TEACHER SALARY SCHEDULES

Sec. 28.14. (a) Effective with the third payroll period of the 1996-97 fiscal year, the Director of the Budget may transfer from the Reserve for Salary Increases for the 1996-97 fiscal year funds necessary to implement the teacher salary schedule set out in subsection (b) of this section, including funds for the employer's retirement and social security contributions and funds for annual longevity payments at one percent (1%) of base salary for 10 to 14 years of State service, one and one-half percent (1.5%) of base salary for 15 to 19 years of State service, two percent (2%) of base salary for 20 to 24 years of State service, and two and one-half percent (2.5%) of base salary for 25 or more years of State service, commencing with the third payroll period of the 1996-97 fiscal year, for all teachers whose salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction. The longevity payment shall be paid in a lump sum once a year.

(b)(1) For the third through the twelfth payroll periods of the 1996-97 fiscal year, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "A" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>Monthly Salary</u>
0	\$2,133
1	2,175
2	2,218
3	2,306
4	2,353
5	2,401
6	2,450
7	2,499
8	2,548
9	2,598
10	2,650
11	2,703
12	2,757
13	2,812
14	2,868
15	2,925
16	2,983
17	3,043
18	3,104
19	3,167
20	3,230
21	3,294
22	3,359
23	3,426
24	3,495
25	3,565
26	3,636
27	3,709
28	3,783
29	3,859
30+	3,859

- (2) For the third through the twelfth payroll periods of the 1996-97 fiscal year, the following monthly salary schedule shall apply to certified personnel of the public schools who are classified as "G" teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

<u>Years of Experience</u>	<u>Monthly Salary</u>
0	\$2,266
1	2,311
2	2,357
3	2,451
4	2,501
5	2,551
6	2,602
7	2,654
8	2,707

9	2,761
10	2,816
11	2,872
12	2,929
13	2,987
14	3,047
15	3,108
16	3,170
17	3,233
18	3,298
19	3,364
20	3,431
21	3,500
22	3,570
23	3,641
24	3,714
25	3,788
26	3,864
27	3,941
28	4,020
29	4,100
30+	4,100

(3) Certified public school teachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers. Certified public school teachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers.

(c) Effective with the third payroll period of the 1996-97 fiscal year, the first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

(d) Effective with the third payroll period of the 1996-97 fiscal year, speech pathologists who hold masters degrees and who are employed in the

public schools as speech and language specialists shall be paid on the school psychologist salary schedule.

Speech pathologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for speech pathologists. Speech pathologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for speech pathologists.

(e) The provisions of Section 7.18 of Chapter 507 of the 1995 Session Laws and the salaries, longevity, and salary supplements set by that section shall remain in effect through the second payroll period of the 1996-97 fiscal year, except that teachers and other employees shall not receive credit for a year of service performed during the 1995-96 school year until the beginning of the third payroll period of the 1996-97 fiscal year.

(f) Certified personnel of the public schools who are: (i) classified as "A" teachers; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as teachers for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of seven hundred thirty-three dollars (\$733.00), payable at the third payroll period of the 1996-97 school year. Certified personnel of the public schools who are: (i) classified as "G" teachers; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as teachers for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of seven hundred seventy-nine dollars (\$779.00), payable at the third payroll period of the 1996-97 school year. Certified personnel of the public schools who are: (i) certified based on academic preparation at the six-year degree level; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as teachers for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of eight hundred four dollars (\$804.00), payable at the third payroll period of the 1996-97 school year. Certified personnel of the public schools who are: (i) certified based on academic preparation at the doctoral degree level; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as teachers for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of eight hundred twenty-nine dollars (\$829.00), payable at the third payroll period of the 1996-97 school year.

(g) Certified personnel of the public schools who are: (i) classified as psychologists with advanced degrees; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as school psychologists for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of eight hundred eighty-five dollars (\$885.00), payable at the third payroll period of the 1996-97 school year. Certified personnel of the public schools who are: (i) classified as psychologists with doctoral degrees; (ii) at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) employed as school psychologists for the first three pay periods of

the 1996-97 school year shall receive a one-time bonus of nine hundred ten dollars (\$910.00), payable at the third payroll period of the 1996-97 school year.

(h) Speech pathologists who (i) hold masters degrees; (ii) are at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) are employed as speech and language specialists for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of eight hundred eighty-five dollars (\$885.00), payable at the third payroll period of the 1996-97 school year. Speech pathologists who (i) hold doctoral degrees; (ii) are at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) are employed as speech and language specialists for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of nine hundred ten dollars (\$910.00), payable at the third payroll period of the 1996-97 school year. Speech pathologists who (i) hold advanced degrees; (ii) are at the maximum of their pay range at the beginning of the third payroll period of the 1996-97 fiscal year; and (iii) are employed as speech and language specialists for the first three pay periods of the 1996-97 school year shall receive a one-time bonus of nine hundred ten dollars (\$910.00), payable at the third payroll period of the 1996-97 school year.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SCHOOL-BASED ADMINISTRATOR SALARIES

Sec. 28.15. (a) Funds appropriated to the Reserve for Salary Increases shall be used for the implementation of the salary schedule for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

(b) The salary schedule for school-based administrators shall apply only to principals and assistant principals. The salary schedule for the 1996-97 fiscal year, commencing September 1, 1996, is as follows:

	Asst.							
Step	Prin.	Prin.I	Prin.II	Prin.III	Prin.IV	Prin.V	Prin.VI	Prin.VI
I								
0	--	--	--	--	--	--	--	--
1	--	--	--	--	--	--	--	--
2	--	--	--	--	--	--	--	--
3	--	--	--	--	--	--	--	--
4	\$2,576	--	--	--	--	--	--	--
5	2,627	--	--	--	--	--	--	--
6	2,680	--	--	--	--	--	--	--
7	2,734	--	--	--	--	--	--	--
8	2,789	\$2,789	--	--	--	--	--	--
9	2,845	2,845	--	--	--	--	--	--
10	2,902	2,902	\$2,960	--	--	--	--	--
11	2,960	2,960	3,019	--	--	--	--	--
12	3,019	3,019	3,079	\$3,141	--	--	--	--

13	3,079	3,079	3,141	3,204	\$3,268	--	--	--
14	3,141	3,141	3,204	3,268	3,333	\$3,400	--	--
15	3,204	3,204	3,268	3,333	3,400	3,468	--	--
16	3,268	3,268	3,333	3,400	3,468	3,537	\$3,608	--
17	3,333	3,333	3,400	3,468	3,537	3,608	3,680	\$3,754
18	3,400	3,400	3,468	3,537	3,608	3,680	3,754	3,829
19	3,468	3,468	3,537	3,608	3,680	3,754	3,829	3,906
20	3,537	3,537	3,608	3,680	3,754	3,829	3,906	3,984
21	3,608	3,608	3,680	3,754	3,829	3,906	3,984	4,064
22	3,680	3,680	3,754	3,829	3,906	3,984	4,064	4,145
23	3,754	3,754	3,829	3,906	3,984	4,064	4,145	4,228
24	3,829	3,829	3,906	3,984	4,064	4,145	4,228	4,313
25	3,906	3,906	3,984	4,064	4,145	4,228	4,313	4,399
26	3,984	3,984	4,064	4,145	4,228	4,313	4,399	4,487
27	4,064	4,064	4,145	4,228	4,313	4,399	4,487	4,577
28	4,145	4,145	4,228	4,313	4,399	4,487	4,577	4,669
29	4,228	4,228	4,313	4,399	4,487	4,577	4,669	4,762
30	4,313	4,313	4,399	4,487	4,577	4,669	4,762	4,857
31	4,399	4,399	4,487	4,577	4,669	4,762	4,857	4,954
32	--	4,487	4,577	4,669	4,762	4,857	4,954	5,053
33	--	--	4,669	4,762	4,857	4,954	5,053	5,154
34	--	--	4,762	4,857	4,954	5,053	5,154	5,257
35	--	--	--	4,954	5,053	5,154	5,257	5,362
36	--	--	--	5,053	5,154	5,257	5,362	5,469
37	--	--	--	--	5,257	5,362	5,469	5,578
38	--	--	--	--	--	5,469	5,578	5,690
39	--	--	--	--	--	--	5,690	5,804
40	--	--	--	--	--	--	5,804	5,920
41	--	--	--	--	--	--	--	6,038.

(c) The appropriate classification for placement of principals and assistant principals on the salary schedule shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Less than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	More than 65 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a

principal, except that a principal shall not receive credit for a year of service performed during the 1995-96 fiscal year until September 1, 1996.

(e) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

(f) There shall be no State requirement that superintendents in each local school unit shall receive in State-paid salary at least one percent (1%) more than the highest paid principal receives in State salary in that school unit: Provided, however, the additional State-paid salary a superintendent who was employed by a local school administrative unit for the 1992-93 fiscal year received because of that requirement shall not be reduced because of this subsection for subsequent fiscal years that the superintendent is employed by that local school administrative unit so long as the superintendent is entitled to at least that amount of additional State-paid salary under the rules in effect for the 1992-93 fiscal year.

(g) Longevity pay for principals and assistant principals shall be as provided for State employees.

(h) (1) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

(2) If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subdivision applies to all transfers on or after the ratification date of this act, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subdivision for one calendar year following the date of the merger.

(i) Except as provided in subsection (h) of this section, the salary of a principal or assistant principal shall not be less for the 1996-97 fiscal year than it was for the 1993-94 fiscal year solely as a result of placement on the salary schedule established in this section.

(j) The provisions of Section 7.19 of Chapter 507 of the 1995 Session Laws and the salaries, longevity, and salary supplements set by that section shall remain in effect through August 31, 1996, except that assistant principals and principals shall not receive credit for a year of service performed during the 1995-96 school year until September 1, 1996.

(k) Certified personnel of the public schools who are school administrators and who are at the maximum of their pay range as of

September 1, 1996, shall receive a one-time bonus as set out in the table below payable September 1, 1996:

<u>Classification</u>	<u>Bonus Amount</u>
Asst. Principal	\$792
Asst. Principal Advanced	815
Asst. Principal Doctorate	837
Principal I	894
Principal I Advanced	919
Principal I Doctorate	945
Principal II	949
Principal II Advanced	974
Principal II Doctorate	999
Principal III	1,007
Principal III Advanced	1,032
Principal III Doctorate	1,057
Principal IV	1,047
Principal IV Advanced	1,072
Principal IV Doctorate	1,097
Principal V	1,090
Principal V Advanced	1,115
Principal V Doctorate	1,140
Principal VI	1,156
Principal VI Advanced	1,181
Principal VI Doctorate	1,207
Principal VII	1,203
Principal VII Advanced	1,228
Principal VII Doctorate	1,253.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SCHOOL CENTRAL OFFICE SALARIES

Sec. 28.16. (a) The following monthly salary ranges apply to public school superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 1996-97 fiscal year, beginning September 1, 1996:

- | | |
|-------------------------------|-------------------|
| (1) School Administrator I: | \$2,818 - \$4,533 |
| (2) School Administrator II: | \$2,991 - \$4,811 |
| (3) School Administrator III: | \$3,174 - \$5,106 |
| (4) School Administrator IV: | \$3,302 - \$5,313 |
| (5) School Administrator V: | \$3,435 - \$5,528 |
| (6) School Administrator VI: | \$3,645 - \$5,867 |
| (7) School Administrator VII: | \$3,792 - \$6,104 |

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer, within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is

placed shall be included in the contract of any employee hired on or after July 1, 1996.

(b) The following monthly salary ranges apply to public school superintendents for the 1996-97 fiscal year, beginning September 1, 1996:

- | | |
|--|-------------------|
| (1) Superintendent I (Up to 2,500 ADM): | \$4,025 - \$6,478 |
| (2) Superintendent II (2,501 - 5,000 ADM): | \$4,272 - \$6,874 |
| (3) Superintendent III (5,001 - 10,000 ADM): | \$4,533 - \$7,295 |
| (4) Superintendent IV (10,001 - 25,000 ADM): | \$4,811 - \$7,741 |
| (5) Superintendent V (Over 25,000 ADM): | \$5,106 - \$8,215 |

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

Notwithstanding the provisions of this subsection, a local board of education may pay an amount in excess of the applicable range to a superintendent who is entitled to receive the higher amount under Section 28.15(f) of this act.

(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees.

(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for under this section.

(e) The State Board shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

(f) The Director of the Budget shall transfer from the Reserve for Salary Increases created in this act for fiscal year 1996-97, beginning September 1, 1996, funds necessary to provide an average annual salary increase of four and five-tenths percent (4.5%), including funds for the employer's retirement and social security contributions, commencing September 1, 1996, for all permanent full-time personnel paid from the Central Office Allotment. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing their salary increases to these personnel.

(g) The provisions of Section 7.17 of Chapter 507 of the 1995 Session Laws shall remain in effect through August 31, 1996.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

NONCERTIFIED PUBLIC SCHOOL EMPLOYEES' SALARY INCREASE

Sec. 28.17. (a) The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1996-97, commencing with the third payroll period, funds necessary to provide a salary increase of four and five-tenths percent (4.5%), including funds for the employer's retirement and social security contributions, commencing with the third payroll period, for all noncertified public school employees, except school bus drivers, whose salaries are supported from the State's General Fund. These funds shall not be used for any purpose other than for the salary increases and necessary employer contributions provided by this subsection.

(b) The fiscal year 1995-96 pay rates adopted by local boards of education for school bus drivers shall be increased by at least four and five-tenths percent (4.5%), commencing with the third payroll period, to the extent that such rates of pay are supported by the allocation of State funds from the State Board of Education. Local boards of education shall increase the rates of pay for all school bus drivers who were employed during fiscal year 1995-96 and who continue their employment for fiscal year 1996-97 by at least four and five-tenths percent (4.5%), commencing with the third payroll period. The Director of the Budget may transfer from the salary increase reserve fund created in this act for fiscal year 1996-97, beginning with the third payroll period of the 1996-97 fiscal year, funds necessary to provide the salary increases for school bus drivers whose salaries are supported from the State's General Fund in accordance with the provisions of this subsection.

(c) The Director of the Budget may transfer from the Reserve for Salary Increases created in this act for fiscal year 1996-97, beginning with the third payroll period of the 1996-97 fiscal year, funds necessary to increase the minimum teacher assistant salary to grade 54.

Requested by: Representatives Holmes, Creech, Esposito

STUDY COMMISSION ON THE COMPREHENSIVE COMPENSATION SYSTEM

Sec. 28.18. (a) The Study Commission on the Comprehensive Compensation System is created. The Commission shall consist of nine members: three Representatives appointed by the Speaker of the House of Representatives, three Senators appointed by the President Pro Tempore of the Senate, and three members appointed by the Governor. The Speaker of the House of Representatives shall designate one Representative as cochair and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies in the membership of the Commission shall be filled by the same appointing officer who made the initial appointment.

(b) The Commission shall:

- (1) Evaluate the Comprehensive Compensation System established in Article 2 of Chapter 126 of the General Statutes; and
- (2) Determine a methodology for funding the pay plan for State employees at varying levels of appropriations to fund State pay increases.

The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before the first day of the 1997 Session by filing the report with the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon filing its final report, the Commission shall terminate.

(c) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

(d) Members of the Commission who are legislators shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Other members of the Commission shall receive reimbursement for travel expenses at the rates allowed by G.S. 138-6.

(e) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(f) All State departments and agencies shall furnish the Commission with any information in their possession or available to them.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SALARY ADJUSTMENT FUND

Sec. 28.19. Any remaining appropriations for legislative salary increases not required for that purpose may be used to supplement the Salary Adjustment Fund. These funds shall first be used to provide reclassifications of those positions already approved by the Office of State Personnel. The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations prior to the allocation of these funds.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

TRAVEL EXPENSE REIMBURSEMENT STUDY

Sec. 28.20. The Office of State Budget and Management shall study the issue of whether the current system of reimbursement of State employees for job-related travel expenses is flexible enough to allow State employees to recover the actual cost of expenses incurred for lodging and meals, when the total of all such costs does not exceed the maximum statutory amount. If the Office of State Budget and Management finds that the current system is not flexible enough to allow State employees to recover all such expenses, the Office of State Budget and Management shall consider ways to make the system more flexible. The Office of State Budget and Management shall report the results of its study, including any proposed policy or statutory

changes and the fiscal impact of such changes, to the Joint Legislative Commission on Governmental Operations, prior to February 1, 1997.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

POSTRETIREMENT BENEFIT INCREASES

Sec. 28.21. (a) G.S. 135-5 is amended by adding a new subsection to read:

"(bbb) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 135-5(o). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996."

(b) G.S. 135-65 is amended by adding a new subsection to read:

"(q) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996."

(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(k) In accordance with subsection (a) of this section, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1996, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on January 1, 1996. Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1996, but before June 30, 1996, shall be increased by a prorated amount of four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1996, and June 30, 1996."

(d) G.S. 128-27 is amended by adding a new subsection to read:

"(rr) From and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1995, shall be increased by four and four-tenths percent (4.4%) of the allowance payable on July 1, 1995, in accordance with G.S. 128-27(k). Furthermore, from and after September 1, 1996, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1995, but before June 30, 1996, shall be increased by a prorated amount of

four and four-tenths percent (4.4%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1995, and June 30, 1996."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SALARY-RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 28.22. Section 7.1(b) of Chapter 324 of the 1995 Session Laws, as amended by Section 7.22A of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(b) ~~Effective July 1, 1995, July 1, 1996,~~ the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the ~~1995-96~~ 1996-97 fiscal year are (i) ten and eighty-three hundredths percent (10.83%) - Teachers and State Employees; (ii) fifteen and eighty-three hundredths percent (15.83%) - State Law Enforcement Officers; (iii) nine and eighteen hundredths percent (9.18%) - University Employees' Optional Retirement Program; (iv) twenty-two and sixty-five hundredths percent (22.65%) - Consolidated Judicial Retirement System; and (v) ~~twenty-three and twenty-seven hundredths percent (23.27%)~~ twenty-four and fifty-eight hundredths percent (24.58%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program includes fifty-two hundredths percent (0.52%) for the Disability Income Plan."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

STATE EMPLOYEE HEALTH BENEFIT PLAN/PREEXISTING HEALTH CONDITIONS

Sec. 28.23. (a) G.S. 135-40.1(15) reads as rewritten:

"(15) Preexisting Condition. -- A condition, disease, illness or injury which existed or had its beginning to any degree, whether diagnosed or not, diagnosed and treated within six months prior to the effective date of coverage."

(b) G.S. 135-40.3(b) is amended by adding a new subdivision to read:

"(5) To administer the 12-month waiting period for preexisting conditions under this Article, the Plan must give credit against the 12-month period for the time that a person was covered under a previous plan if the previous plan's coverage was continuous to a date not more than 60 days before the effective date of coverage. As used in this subdivision, a 'previous plan' means any policy, certificate, contract, or any other arrangement provided by any accident and health insurer, any hospital or medical service corporation, any health maintenance organization, any preferred provider organization, any multiple employer welfare arrangement, any self-insured health benefit arrangement,

any governmental health benefit or health care plan or program, or any other health benefit arrangement."

(c) This section is effective July 1, 1995.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

STATE EMPLOYEE HEALTH BENEFIT PLAN/SKILLED NURSING FACILITY BENEFITS IN FACILITIES NOT MEDICARE-QUALIFIED

Sec. 28.24. G.S. 135-40.6(3) reads as rewritten:

"(3) Skilled Nursing Facility Benefits. -- The Plan will pay benefits in a skilled nursing facility ~~which qualifies for delivery of benefits under Title XVIII of the Social Security Act (Medicare),~~ licensed under applicable State laws as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

- a. The services are medically required to be given on an inpatient basis because of the covered individual's need for skilled nursing care on a continuing basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services,
- b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor who certifies that continual hospital confinement would be required without the care and treatment of the skilled nursing facility, and
- c. Approved in advance by the Claims Processor.

For facilities not qualified for delivery of services covered by the benefits of Title XVIII of the Social Security Act (Medicare), neither the Plan nor any of its members shall be billed or held

liable by such facilities for charges that otherwise would be covered by Medicare."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom, Ballance, Rand

REDEFINE SERVICE FOR PURPOSES OF LONGEVITY PAY FOR PUBLIC DEFENDERS

Sec. 28.25. G.S. 7A-465(b) reads as rewritten:

"(b) The public defender shall be an attorney licensed to practice law in North Carolina, and shall devote his full time to the duties of his office.

In lieu of merit and other increment raises paid to regular State employees, a public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. 'Service' means service as a public ~~defender~~, defender, assistant public defender, justice or judge of the General Court of Justice, or clerk of superior court."

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

MECKLENBURG LAW OFFICERS' EMERGENCY AND PENSION FUND CHANGE

Sec. 28.26. (a) Section 5 of Chapter 446 of the Public-Local Laws of 1931, as amended by Section 1 of Chapter 305 of the 1967 Session Laws, is rewritten to read:

"Sec. 5. The funds accumulated under this act shall be known as the 'Emergency and Pension Fund of the County of Mecklenburg' and shall be used as a fund for all arresting officers, as defined in Section 2 of this act, and their families. If an officer while in the actual performance of that officer's duties is killed, the board may pay any amount up to a maximum of ten thousand dollars (\$10,000) as a death benefit to the surviving spouse of the deceased officer. If the officer is not married at the time of death, the board may pay any amount up to a maximum of ten thousand dollars (\$10,000) to the nearest dependent next of kin of the deceased. It is further the true intent, meaning, and purpose of this act that the board may pay any amount less than the amount specified, and the board may refuse to make a payment of any amount in any case in any or all of the classes enumerated in this act. Further, the board may use monies from the fund to award scholarships to dependent children of officers who are either killed while in the performance of their duties or who are rendered totally disabled as a result of an injury received while in the performance of their duties. The maximum scholarship amount shall be two thousand five hundred dollars (\$2,500) per child."

(b) Nothing in this section shall create any liability for the Emergency and Pension Fund of the County of Mecklenburg unless there are sufficient current assets in the Fund to pay fully for the liability. Under no circumstances shall the State incur any liability as a result of this section.

PART 29. MISCELLANEOUS PROVISIONS

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

EXECUTIVE BUDGET ACT APPLIES

Sec. 29. The provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, as amended by this act, are reenacted and shall remain in full force and effect and are incorporated in this act by reference.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

CONFERENCE REPORT

Sec. 29.1. (a) The Joint Appropriations Committee House/Senate Conference Report on Budget Modifications, dated August 3, 1996, together with any accompanying correction sheets, which was distributed in the Senate and used to explain this act, shall indicate action by the General Assembly on this act and shall therefore be used to construe this act, as provided in G.S. 143-15 of the Executive Budget Act, and for these purposes shall be considered a part of this act.

(b) The budget enacted by the General Assembly for the maintenance of the various departments, institutions, and other spending agencies of the State for the 1995-97 fiscal biennium is a line item budget, in accordance with the Budget Code Structure and the State Accounting System Uniform Chart of Accounts set out in the Administrative Policies and Procedures Manual of the Office of the State Controller. This budget includes the appropriations made from all sources including the General Fund, Highway Fund, special funds, cash balances, federal receipts, and departmental receipts.

The General Assembly amended the itemized budget requests submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, in accordance with the steps that follow and the line item detail in the budget enacted by the General Assembly may be derived accordingly:

- (1) Negative reserves set out in the submitted budget were deleted and the totals were increased accordingly.
- (2) The base budget was adjusted in accordance with the base budget cuts and additions that were set out in the Joint Appropriations Committee House/Senate Conference Report on Budget Modifications, dated August 3, 1996, together with any accompanying correction sheets.
- (3) Transfers of funds supporting programs were made in accordance with the Joint Appropriations Committee House/Senate Conference Report on Budget Modifications, dated August 3, 1996, together with any accompanying correction sheets.

The budget enacted by the General Assembly shall also be interpreted in accordance with the special provisions in this act and in accordance with other appropriate legislation.

In the event that there is a conflict between the line item budget certified by the Director of the Budget and the budget enacted by the General Assembly, the budget enacted by the General Assembly shall prevail.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

MOST TEXT APPLIES ONLY TO 1996-97

Sec. 29.2. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

1995-96 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

Sec. 29.3. (a) Except where expressly repealed or amended by this act, the provisions of Chapters 324 and 507 of the 1995 Session Laws remain in effect.

(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1995-96 fiscal year in Chapters 324 and 507 of the 1995 Session Laws that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations and budget reductions of this act for those same particular purposes.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

EFFECT OF HEADINGS

Sec. 29.4. The headings to the parts and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

SEVERABILITY CLAUSE

Sec. 29.5. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue, Odom

EFFECTIVE DATE

Sec. 29.6. Except as otherwise provided, this act becomes effective July 1, 1996.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

AN ACT TO REFUND TO FEDERAL RETIREES THE
UNCONSTITUTIONAL TAXES THEY PAID ON THEIR PENSIONS
FOR TAX YEARS 1985 THROUGH 1988.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.20 reads as rewritten:

"§ 105-151.20. Credit or partial refund for tax paid on certain government federal retirement benefits.

(a) Purpose; Definitions. -- The purpose of this section is to benefit certain retired federal government workers on account of their public service. The following definitions apply in this section:

- (1) Federal retirement benefits. -- Retirement benefits received from one or more federal government retirement plans.
- (2) Net pension tax. -- The amount of tax a taxpayer paid under this Division for the 1985, 1986, 1987, and 1988 tax years on federal retirement benefits, without interest, less any part of the tax for which the taxpayer received a credit under this section before 1997 and any part of the tax refunded to the taxpayer before 1997.
- (3) Tax year. -- The taxpayer's taxable year beginning on a day in the applicable calendar year.

(b) Credit. -- A taxpayer who received government federal retirement benefits during the 1985, 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this Division equal to the net pension tax on those benefits. The amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

As used in this section, the term "government retirement benefits" means retirement benefits received from one or more state, local, or federal government retirement plans. As used in this section, the term "1988 tax year" means the taxpayer's taxable year beginning on a day in 1988.

The

credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990, 1996. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer.

(c) Partial Refund Alternative. -- If the amount of tax imposed by this Division on the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits allowed against the tax except payments of tax made by or on behalf of the taxpayer, is less than five percent (5%) of the taxpayer's net pension tax for which credit is allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu of claiming the credit. The partial refund allowed under this subsection is equal to the lesser of

eighty-five percent (85%) of the taxpayer's net pension tax or the reduced amount determined by the Secretary as provided in this subsection. To elect the partial refund, an eligible taxpayer must file with the Secretary on or before April 15, 1997, a written request for a partial refund of the taxpayer's net pension. The Secretary shall calculate from these requests eighty-five percent (85%) of the total amount of net pension tax for which partial refunds have been claimed and, if this sum exceeds the amount in the Federal Retiree Refund Account created in this section, shall allocate the amount in the Account among the eligible taxpayers claiming partial refunds by reducing each taxpayer's claimed refund in proportion to the size of the claimed refund. The Secretary shall remit these partial refunds before January 1, 1998.

(d) Substantiation; Deceased Taxpayers. -- In order to claim a refund or credit under this section, a taxpayer must provide any information required by the Secretary to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit. In the case of a taxpayer who is deceased, the representative of the taxpayer's estate may claim the refund or credit in the name of the deceased taxpayer.

(e) Federal Retiree Accounts. -- There are created in the Department of Revenue two special accounts to be known as the Federal Retiree Refund Account and the Federal Retiree Administration Account. Funds in the Federal Retiree Refund Account shall be spent only for partial refunds pursuant to subsection (c) of this section. The Department of Revenue may use funds in the Federal Retiree Administration Account only for the costs of administering this section. Funds in the Federal Retiree Refund Account and the Federal Retiree Administration Account shall not revert to the General Fund until the Director of the Budget certifies that the Department of Revenue has completed all duties necessary to implement this section, including processing the escheat of refund checks that have not been cashed."

Sec. 2. Effective January 1, 2003, G.S. 105-151.20 is repealed.

Sec. 3. (a) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of twenty-five million dollars (\$25,000,000) to the credit of the Federal Retiree Refund Account created in this act. These funds shall be used to make refunds to federal retirees as provided in Section 1 of this act.

(b) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of one million two hundred thousand dollars (\$1,200,000) to the credit of the Federal Retiree Administration Account created in this act. These funds shall be used to administer the credits and refunds to federal retirees as provided in Section 1 of this act.

(c) The earmarking contained in this section comes from the excess of General Fund revenues collected for the 1995-96 fiscal year over prior estimates used in the calculation of General Fund budget availability for the purpose of adopting changes to the 1996-97 General Fund budget. These funds were not included in earlier budget reform statements for proposals to adjust the 1996-97 General Fund budget.

Sec. 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1996. Section 2 of this act is effective January 1, 2003. Section 3 of this act is effective June 30, 1996. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

S.B. 2

CHAPTER 20

AN ACT TO AUTHORIZE CRAVEN COUNTY TO LEVY AN
ADDITIONAL ROOM OCCUPANCY TAX AND TO REVISE THE
EXISTING CRAVEN COUNTY ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 721 of the 1995 Session Laws is reenacted.

Sec. 2. This act is effective upon ratification and applies to taxes collected on or after the effective date of a tax levied under Section 2.1 of Chapter 980 of the 1983 Session Laws, as amended by Chapter 721 of the 1995 Session Laws and by this act.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

RESOLUTIONS

H.J.R. 46

RESOLUTION 1

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT SINE DIE
OF THE 1996 SECOND EXTRA SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

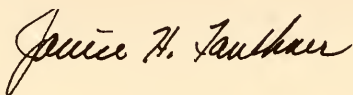
Section 1. When the House of Representatives and the Senate, constituting the 1996 Second Extra Session of the General Assembly, do adjourn on Saturday, August 3, 1996, they stand adjourned sine die.

Sec. 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of August, 1996.

STATE OF NORTH CAROLINA
DEPARTEMENT OF STATE,
RALEIGH, AUGUST 3, 1996

I, JANICE H. FAULKNER, Secretary of State of North Carolina, hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A handwritten signature in cursive script, reading "Janice H. Faulkner". The signature is written in dark ink and is positioned above the printed title "Secretary of State".

Secretary of State

APPENDIX

EXECUTIVE ORDERS OF GOVERNOR JAMES B. HUNT, JR.

Title	Number
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE BERTHA	97

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 97 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE BERTHA

WHEREAS, I have proclaimed that a state of emergency and threatened disaster exists in certain areas of North Carolina due to Hurricane Bertha; and

WHEREAS, the United States Department of Transportation, in conjunction with the North Carolina Department of Transportation, has declared a regional emergency justifying an exemption from 49 C.F.R. 390-399 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4(3) and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that if vehicles bearing food, equipment, and supplies to relieve our hurricane-stricken counties must adhere to the weight restrictions of N.C.G.S. 20-88, 20-96 and 20-118, citizens those counties likely will suffer losses and, therefore, there is an imminent threat of widespread damage within the meaning of N.C.G.S. 166A-4(3);

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State, and with the concurrence of the Council of State, IT IS ORDERED:

Section I. The Division of Motor Vehicles shall waive restrictions and penalties therefor arising under N.C.G.S. 20-88, 20-96, and 20-118 for vehicles transporting food, equipment, and supplies, including necessary utility vehicles along our highways to North Carolina's hurricane-stricken counties.

Section 2. Notwithstanding the waivers set forth above, restrictions and penalties shall not be waived under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.
- (B) When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.
- (C) When vehicle/vehicle combination exceeds 12 feet in width and a total overall combination vehicle length of 65 feet from bumper to bumper.

Section 3.

- (A) Upon entering North Carolina, the vehicles will stop at the first available vehicle weight station and produce identification sufficient to establish that its load will be used for the Hurricane Bertha relief effort. All other safety restrictions apply. If returning vehicles are loaded with some other backhaul, all normal weight and permit restrictions apply.
- (B) The \$50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. The penalties described in N.C.G.S. 20-382 concerning insurance registration are waived also. Finally, no quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (C) The vehicles will be allowed only in primary and interstate routes designated by the North Carolina Department of Transportation.

Section 4. Vehicles described in Section 1 which are nonparticipants in North Carolina's International Registration Plan will be permitted to pass through North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 5. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner in which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 6. This Order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

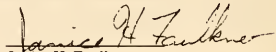
This Executive Order shall be effective immediately and shall remain in effect for 30 days.

Done in the Capital City of Raleigh, North Carolina this 12th day of July, 1996.




James B. Hunt Jr.
Governor

ATTEST:


Janice H. Faulkner
Secretary of State

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